4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK CHURCH,)
Plaintiff,
v.
AVAYA CORPORATION,
Defendants.)

08CV47
JUDGE KENDALL
MAG. JUDGE COX

FILED
JAN - 3 2008
Jan 3, 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

NOTICE OF REMOVAL OF CAUSE

TO: ***Attorney for Plaintiff*:**
Kenneth J. Merlino
Merlino Law Offices, P.C.
1275 Rosedale
Hoffman Estates, IL 60169

Defendant Avaya Corporation ("Avaya"), pursuant to 28 U.S.C. § 1446 and the Local Rules of the United States District Court, Northern District of Illinois, notifies this Honorable Court that the above-entitled cause has been removed from the Circuit Court of Cook County, Illinois, Law Division, and in support of said notice states as follows:

1. The Summons and Complaint in this matter were served on Avaya on or after December 7, 2007. This pleading is filed within thirty (30) days of service of the Complaint. (Copies of the Summons and Complaint are attached hereto as Exhibit A.) The Complaint is the only pleading that has been received by Defendant and that has been filed with the Court at this time.

2. The Complaint seeks damages for breach of contract. (Ex. A at ¶¶ 27-28.) Avaya denies that Plaintiff is entitled to any of the relief sought in the Complaint.

3. The parties in this matter are of diverse citizenship. Plaintiff is a resident of Cook County, Illinois and a citizen of Illinois. (Ex. A at ¶ 1.) Avaya is a Delaware corporation with its principal place of business located in Basking Ridge, New Jersey. (Ex. A at ¶ 2.)

4. Plaintiff seeks in excess of $75,000.00 in damages exclusive of interest and costs in his Complaint. Specifically, Plaintiff seeks damages for breach of contract in excess of $6,000,000.00. (Ex. A at ¶ 28.)

5. This Court has original jurisdiction over this action under 28 U.S.C. § 1332: Plaintiff's Complaint is removable on its face.

6. In compliance with 28 U.S.C. § 1446(b), this Notice of Removal is filed with this Court within thirty (30) days after receipt of a copy of the initial pleading setting forth the claim for relief upon which this action or proceeding is based by Avaya and within thirty (30) days after service of summons on the first served defendant.

WHEREFORE, Defendant Avaya Corporation notifies that this cause has been removed from the Circuit Court of Cook County, Illinois, Law Division, to the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to the provisions of 28 U.S.C. § 1446 and the Local Rules of the United States District Court for the Northern District of Illinois.

AVAYA CORPORATION

By: ______________________
One of Its Attorneys

David M. Holmes
Bryan J. Johnson
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
120 North LaSalle Street, Suite 2600
Chicago, IL 60602
(312) 704-0550

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the above and foregoing pleading was deposited in the U.S. Mail, enclosed in an envelope properly addressed to:

***Attorney for Plaintiff*:**

Kenneth J. Merlino
Merlino Law Offices, P.C.
1275 Rosedale
Hoffman Estates, IL 60169
(847) 567-5796

Before the hour of 5:00 p.m. this 3rd day of January, 2008.

Bryan J. Johnson

456139.1

2120 - Served	2121 - Served	
2220 - Not Served	2221 - Not Served	
2320 - Served By Mail	2321 - Served By Mail	
2420 - Served By Publication	2421 - Served By Publication	
SUMMONS	ALIAS - SUMMONS	CCG N001-10M-1-07-05 ( )

SHERIFF'S OFFICE SOMERSET COUNTY, N.J.
RECEIVED
2007 DEC -5 PM 1:05

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

(Name all parties)

MARK CHURCH, an Individual

v.

AVAYA CORPORATION, a Foreign Corporation.

07L 013053

No. ______

AVAYA CORPORATION
211 Mt. Airy Road
Basking Ridge, New Jersey 07920

SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

☑ Richard J. Daley Center, 50 W. Washington, Room ______, Chicago, Illinois 60602

☐ District 2 - Skokie, 5600 Old Orchard Rd., Skokie, IL 60077

☑ District 3 - Rolling Meadows, 2121 Euclid, Rolling Meadows, IL 60008

☐ District 4 - Maywood, 1500 Maybrook Ave., Maywood, IL 60153

☐ District 5 - Bridgeview, 10220 S. 76th Ave., Bridgeview, IL 60455

☐ District 6 - Markham, 16501 S. Kedzie Pkwy., Markham, IL 60426

☐ Child Support, 28 North Clark St., Room 200, Chicago, Illinois 60602

You must file within 30 days after service of this Summons, not counting the day of service.
IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 42276
Name: Ken Merlino/Merlino Law Offices, P.C.
Atty. for: Plaintiff
Address: 1275 Rosedale
City/State/Zip: Hoffman Estates, Illinois 60169
Telephone: (847) 567-5796

WITNESS, DOROTHY BROWN NOV 19 2007

Clerk of Court

Date of service: ______, ______
(To be inserted by officer on copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at: ______
(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT A

SHERIFF'S OFFICE
SOMERSET COUNTY, N.J.
RECEIVED

2007 DEC -5 PM 1:05

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

MARK CHURCH, an Individual)
Plaintiff,)
vs.) No. 07L 013053
AVAYA CORPORATION, a Foreign Corporation,)
) **JURY TRIAL DEMANDED**
Defendant.)

COMPLAINT AT LAW

NOW COMES the Plaintiff MARK CHURCH, by and through his counsel and for his Complaint at Law against AVAYA CORPORATION, a Foreign Corporation, alleges in the hypothetical and in the alternative:

Parties

1. The Plaintiff Mark Church ("Church"), is an individual who resides and, at all relevant times, was a citizen of the County of Cook, State of Illinois.

2 The Defendant Avaya Corporation ("Avaya"), is a foreign corporation organized under the laws of the State of Delaware, who, at all relevant times, had its principal place4 of business in Basking Ridge, New Jersey.

Jurisdiction and Venue

3. Venue is proper in the Circuit Court of Cook County, Illinois pursuant to 735 ILCS §5/2-101, in that in the contracts at issue in this action were signed and/or agreed to in Cook County, and the promises made supporting the causes of action were communicated to Mark Church while he was located in Cook County, Illinois. Accordingly, pursuant to 735 ILCS §5/2-101, venue is proper in this Court as Cook County, Illinois is the county in which the transaction or some part thereof occurred out of which the cause of action arose.

4. Jurisdiction in this Court is established in that the Plaintiff, at all relevant times,

was a citizen of the State of Illinois, was domiciled in the County of Cook, City of Chicago, State of Illinois. In addition, jurisdiction lies over Avaya in this Court as it made numerous phone calls, Emails, and personal visits to Cook County, Illinois directly related to the subject matter of this lawsuit. In addition, Defendant Avaya has a significant presence here, doing business on a systemic level here with Church, and other employees and clients – all of whom are domiciled in Chicago, Cook County, Illinois.

Count I

(Breach of Contract)
(Church v. Avaya)

1-5. Plaintiff Church re-alleges and incorporates herein paragraphs 1-4 above as paragraphs 1-5 of this Count as if fully stated herein.

6. At all times relevant, Mark Church was an employee of Avaya Corporation, based in the City of Chicago, Illinois.

7. From 2001 until January, 2007, Mark Church, in exchange for a salary and commissions, agreed to develop IP Telephony business for Avaya and sell its products and services.

8. At all relevant times, Avaya utilized "condition sheets" for its sales executives like Mark Church.

9. At the beginning of its fiscal sales year (which ran from October 1st of every year through September 31st of the following year), Avaya would issue to Mark Church and all other sales executives, a "Condition Sheet."

10. The Condition Sheets were offers for employment and made express promises regarding payment in exchange for the sales executive's services, quota's, and specifically identified the sales person's territory or designated named accounts to whom the sales executive was to sell Avaya's products and services.

11. For fiscal year 2005 (running from 10/1/04 through 9/30/05), Mark Church was issued four separate condition sheets:

Summary of Condition Sheets: FY05

Condition Sheet	Effective Date	Quota	Named Account(s)
Exhibit 1	10/1/04	$2,703,444.00	C.N.A. and ABN AMRO
Exhibit 2	12/1/04	$2,578,312.00	C.N.A. and ABN AMRO
Exhibit 3	4/1/05	$3,078,312.00	C.N.A. and ABN AMRO
Exhibit 4	6/1/05	$3,170,661.00	C.N.A. and ABN AMRO

12. At all times during the time period 10/1/04 through 9/30/05, Avaya agreed – in exchange for Mark Church performing his job as a sales executive – that it would pay him pursuant to the Avaya FY2005 Sales Compensation Policies (Ex. 5), for all sales that he made, facilitated or sales to clients he originated, including those sales made to his two named accounts: C.N.A. and ABN AMRO.

13. At all times relevant, Mark Church fully and completely performed his duties of sales executive and met all conditions precedent for his employment, pursuant to the terms of the Condition Sheets and Avaya FY2005 Sales Compensation Policies.

14. Avaya expressly promised to retire quota and/or pay commissions on all sales made by Mark Church and/or all sales made to companies who Mark Church was responsible for originating as customers.

15. This promise was a material term of the agreement struck between Mark Church and Avaya corporation and was the benefit of the bargain for Mark Church.

16. By assigning Mark Church only two named accounts, Avaya prevented Mark Church from developing his and Avaya's business with any other potential customer or company, causing him to spend all of his available time pursuing just these two accounts.

17. Mark Church was told repeatedly by Management that if sales were made to either of those entities, that he would be credited, his quota would be retired and he would be

paid commissions on the sale.

18. In addition, pursuant to the Avaya FY05 Global Sales Compensation Plan Design, See Ex. 6, Avaya promised to pay all new revenue at an "Accelerator" – which meant paying a 3x multiplier, and to pay/credit long term service contracts at Committed Contract Value – "CCV."

20. By agreeing to the Conditions Sheets, both Avaya and Mark Church agreed and promised each other that if sales were made to either of those entities, that his quota would be retired and he would be paid commissions on those sales.

21. From 2001 through 2005, Mark Church was responsible for large sales to ABN AMRO and its Chicago subsidiary LaSalle National Bank.

22. From 2001 through 2006, Avaya materially breached its contractual obligations owed to Mark Church by failing to retire Mark Church's quota and by failing to pay commissions based on two discrete sales – a sale of over eight million dollars ($8,000,000.00) ("the First Sale") to LaSalle National Bank, a subsidiary of ABN AMRO, and a September 27, 2005 sale to ABN AMRO of over one hundred ninety million dollars ($190,000,000.00) ("the Global Win").

23. For the First Sale, Avaya materially breached their promises and contractual obligations contained in the applicable global sales policies by failing to retire Mark Church's quota and by failing to pay him commission despite him having closed over $8M in business on Avaya's behalf.

24. For the Global Win, materially breached their promises and contractual obligations contained in the applicable global sales policies by failing to retire Mark Church's quota and by failing to pay him commission despite him having originated the client (ABN AMRO), and being the primary person who was responsible for Avaya closing over $190M in business.

25. Avaya's failure to retire quota for Mark Church or pay commissions due on the

two sales (which were over five million dollars ($5,000,000.00)), was a material breach of the contracts between them (including the global sales policies and the conditions sheets).

26. Avaya's failure to retire quota for Mark Church or pay commissions due on the two sales (which were over five million dollars ($5,000,000.00)), was also a material breach of the good faith and fair dealing component of the contract which was implied in their relationship under Illinois law.

27. Avaya, by and through its agents, management and employees, materially breached the contract(s) between it and Mark Church (for the calendar years 2001 through 2006), in one or more of the following ways:

a. failed to pay Mark Church commissions on the First Sale;

b. failed to use the First Sale to retire his quota;

c. failed to credit Mark Church for the First Sale;

d. failed to alter his quota despite delivery problems pushing the closing of the First Sale into the following sales years;

e. failed to pay Mark Chruch commissions on the Global Win;

f. failed to use the Global Win to retire his quota;

g. failed to alter his quota from 2001 to 2006 to account for the fact that Mark Church was spending nearly all of his time on the ABN AMRO account;

h. failed to exercise good faith by failing to pay Mark Church commissions on the First Sale;

i. failed to exercise good faith by failing to use the First Sale to retire his quota;

j. failed to exercise good faith by failing to credit Mark Church for the First Sale;

k. failed to exercise good faith by failing to pay Mark Church commissions on the Global Win;

l. failed to exercise good faith by failing to sue the Global Win to retire his quota;

m. failed to exercise good faith by failing to alter his quota from 2001 through 2006 to account for the fact that Mark Church was spending nearly all of his time on the ABN AMRO account;

n. failed to exercise good faith in calculating his "Spiff" under the applicable condition sheets and sales compensation policies;

o. failed to exercise good faith in using its discretion with respect to the timing and payout of the First Sale and Global Win;

p. failed to otherwise act reasonably and in good faith under the circumstances;

q. otherwise breached material terms of the agreements.

28 As a direct and proximate result of Avaya's breaches outlined above, Mark Church suffered pecuniary damages in an amount in excess of six million dollars ($6,000,000.00).

29. At all times relevant, Mark Church preformed his obligations fully, effectively and with good faith.

Wherefore, the Plaintiff Mark Church respectfully requests judgment in his favor and against Avaya Corporation, an award of compensatory damages in an amount to be proven at trial, attorneys' fees and any such other relief as this Court deems just and appropriate under the circumstances.

Respectfully Submitted,

MARK CHURCH

By: ______________________
One of his attorneys

Kenneth J. Merlino, Esq.
Merlino Law Offices, P.C.
1275 Rosedale
Hoffman Estates, Illinois 60169
Tel: (847) 567-5796
Fax: (866) 596-6685
Attorney # 42276

George N. Panagoulias, Esq.
The Law Offices of George N. Panagoulias, LLC
4061 N. Milwaukee Ave.
Chicago, Illinois 60641
Tel: (847) 720-4169
Fax: (773) 777-0364
Attorney # 43876

Counsel for Mark Church

EXHIBIT 1

AVAYA FY2005 SALES COMPENSATION

Condition Sheet / Plan Agreement / Declaration Of Understanding

Personal, Organizational, and Pay Data

Effective Date of Change: 10/1/2004

First Name: Mark
Last Name: Church
Personnel ID: 3724920
E-mail Address: mchurch
Local Legal Entity: Avaya Inc
Country: USA
Region: N. America
Business Unit: GSM

Plan Title: GSM Strategic Account Manager B
Job Title: Named Account Client Executive
Plan Start Date: 10/1/2004
Plan End Date:
Total Target Variable Incentive*: 84,465.00
Base Salary (outside US only): 84,465.00
Salary and Target Incentive Currency: USD
Corporate Title: 20-MGR

** Target incentive must be pro-rated for associates on plan after 1-Oct-2004. Associates cannot be on Plan for Partial months.*

Assignment Attributes

Assigned Accounts and/or Territories: Input description of assignments here or use the attached addendum.

Assigned Products: ECG All Products IPOffice OneTime Svcs

Recognition Criteria: Where-managed product revenue, services contract value, and one-time billed services revenue to assigned accounts

Plan Measurements

Measurements	Quota / Target	Quota Currency	Variable Incentive Weighting	Itemized Target Incentive	Payout Frequency	Assigned MBO
Measurement 1*	2,703,444	USD	100.00%	84,465.00	Monthly	
Measurement 2*	0	USD			Monthly	
MBO #1**						
MBO #2**						
MBO #3**					Quarterly	

** Refer to plan documentation on Avaya Sales Portal for descriptions of measurements for this plan type*
*** Each MBO will be equally weighted; refer to plan documents for eligible MBO's*

Declaration of Understanding

I, the undersigned (employee), hereby acknowledge having received a copy of the FY05 Avaya Sales Compensation Plan and the FY05 Avaya Sales Compensation Policies (together referred to as the "Plan"). I acknowledge that I have read, understand and accept the terms and conditions of the Plan, and this condition sheet, all of which are applicable as of October 1st, 2004.

If I am an employee based in the U.S., I also acknowledge that my employment with Avaya is at-will, and I further understand that payments to me during the fiscal year may exceed earned incentive compensation. If this occurs, I hereby agree that Avaya is entitled to recover the differences from me, and I authorize Avaya to deduct any overpayment from any compensation that is or may be owing in an amount not to exceed applicable statutory limitations. If I am an employee of an Avaya subsidiary in a non-US jurisdiction I should refer to applicable laws and labor agreements.

This document shall revoke and supersede all earlier agreements related to the Avaya Sales Compensation Plan or any other Avaya incentive plan.

Approval Signatures

Employee ____________ Date ________

Supervisor ____________ Date ________

Next Supervisor ____________ Date ________

AVAYA FY2005 SALES COMPENSATION

Condition Sheet / Plan Agreement / Declaration Of Understanding

This Addendum is used to document greater specificity around an associate's Assignment Attributes.

Where possible, list specific postal codes or Avaya system codes that will be used to track quota retirement and payout crediting. These codes should support, and not conflict, with the textual description of the associate's assignments.

Attach additional pages as necessary.

Special Notes:

- For managers whose credit is defined as a roll-up of direct reports, list the direct reports' names AND their personnel ID's.
- For associates assigned to Named Accounts, indicate whether the Hierarchy Node is Level 1, 2, or 3.
- For associates assigned to both accounts and territories, clearly differentiate between which codes are to be used to credit account revenue and which to credit to territory revenue.

Begin listing here:

0002665090	CNA FINANCIAL CORP	0002763777	ABN AMRO CHICAGO CORP / DATA

EXHIBIT 2

AVAYA FY2005 SALES COMPENSATION

Condition Sheet / Plan Agreement / Declaration Of Understanding

Personal, Organizational, and Pay Data

Effective Date of Change: 12/1/2004

First Name: Mark
Last Name: Church
Personnel ID: 3724920
E-mail Address: mchurch
Local Legal Entity: Avaya Inc
Country: USA
Region: N. America
Business Unit: GSM

Plan Title: GSM Strategic Account Manager B
Job Title: Named Account Client Executive
Plan Start Date: 10/1/2004
Plan End Date:
Total Target Variable Incentive*: 84,465.00
Base Salary (outside US only): 84,465.00
Salary and Target Incentive Currency: USD
Corporate Title: 20-MGR

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Assignment Attributes

Assigned Accounts and/or Territories: Input description of assignments here or use the attached addendum.

Assigned Products: ECG All Products IPOffice OneTime Svcs

Recognition Criteria: Where-managed product revenue, services contract value, and one-time billed services revenue to assigned accounts

Plan Measurements

Measurements	Quota / Target	Quota Currency	Variable Incentive Weighting	Itemized Target Incentive	Payout Frequency	Assigned MBO
Measurement 1*	2,578,312	USD	100.00%	84,465.00	Monthly	
Measurement 2*	0	USD			Monthly	
MBO #1**						
MBO #2**					Quarterly	
MBO #3**						

** Refer to plan documentation on Avaya Sales Portal for descriptions of measurements for this plan type*
*** Each MBO will be equally weighted; refer to plan documents for eligible MBO's*

Declaration of Understanding

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This document shall revoke and supersede all earlier agreements related to the Avaya Sales Compensation Plan or any other Avaya Incentive plan.

Approval Signatures

Employee ______________ Date ______________

Supervisor ______________ Date ______________

Next Supervisor ______________ Date ______________

AVAYA FY2005 SALES COMPENSATION

Condition Sheet / Plan Agreement / Declaration Of Understanding

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Attach additional pages as necessary.

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Begin listing here:

0002665090	CNA FINANCIAL CORP	0002763777	ABN AMRO CHICAGO CORP / DATA

EXHIBIT 3

AVAYA FY2005 SALES COMPENSATION

Condition Sheet / Plan Agreement / Declaration Of Understanding

Personal, Organizational, and Pay Data

Effective Date of Change: 4/1/2005

First Name: Mark
Last Name: Church
Personnel ID: 3724920
E-mail Address: mchurch
Local Legal Entity: Avaya Inc
Country: USA
Region: N. America
Business Unit: GSM

Plan Title: GSM Strategic Account Manager B
Job Title: Named Account Client Executive
Plan Start Date: 10/1/2004
Plan End Date:
Total Target Variable Incentive*: 84,465
Base Salary (outside US only): 84,465
Salary and Target Incentive Currency: USD
Corporate Title: 20-MGR

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** Refer to plan documentation on Avaya Sales Portal for descriptions of measurements for this plan type*
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Employee ____________ Date ____________

Supervisor ____________ Date ____________

Next Supervisor ____________ Date ____________

AVAYA FY2005 SALES COMPENSATION

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0002665090	CNA FINANCIAL CORP	0002763777	ABN AMRO CHICAGO CORP / DATA

EXHIBIT 4

AVAYA FY2005 SALES COMPENSATION

Condition Sheet / Plan Agreement / Declaration Of Understanding

Personal, Organizational, and Pay Data

Effective Date of Change: 6/1/2005

First Name: Mark
Last Name: Church
Personnel ID: 3724920
E-mail Address: mchurch
Local Legal Entity: Avaya Inc
Country: USA
Region: N. America
Business Unit: GSM

Plan Title: GSM Strategic Account Manager B
Job Title: Named Account Client Executive
Plan Start Date: 10/1/2004
Plan End Date:
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Next Supervisor ______________ Date ______

AVAYA FY2005 SALES COMPENSATION

Condition Sheet / Plan Agreement / Declaration Of Understanding

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0002665090	CNA FINANCIAL CORP	0002763777	ABN AMRO CHICAGO CORP / DATA

GSM Strategic Account Manager B
Church,Mark-3724920

EXHIBIT 5

Avaya FY05 Sales Compensation Plan
Strategic Account Manager B

CONTENTS

Plan Effective Date: October 1, 2004

FY05 AVAYA SALES COMPENSATION PLAN INFORMATION

The FY05 Avaya Inc. ("Avaya") Sales Compensation Plans nor any other manual or policy published or distributed by Avaya is an express or implied contract for continued employment or employment of a specific length of time. Avaya employees are employees-at-will. That means that Avaya employees may terminate their employment at any time and for any reason. That also means that Avaya can terminate its employees' employment at any time and for any reason. Employees of Avaya's subsidiaries in non-US jurisdictions should refer to applicable laws and labor agreements.

Avaya reserves the right to: (1) amend, change, or cancel the Sales Compensation Plan or any elements of the Plan solely at its discretion; and (2) revise assigned territories, revenue quotas, reduce, modify, or withhold compensation based on individual/team performance or Avaya determination of special circumstances, with or without prior notice, and either retroactively or prospectively, except in countries where it is a violation of applicable law.

Any employee manipulation or other misuse of the plan is a violation of the Code of Conduct, including but not limited to code of conduct provisions relating to company records and company funds, and can result in disciplinary action including dismissal and civil or criminal prosecution. Manipulation or misuse includes, but is not limited to misrepresenting or overstating sales; failing to timely submit customer requests/ complaints or adjustments; and taking credit for revenues or sales outside assigned responsibilities.

Except as otherwise specified herein, no management employee may change the content, policies, or guidelines contained herein unless such change is made in accordance with the Schedule of Authorization set forth herein.

This document may be translated into local languages. If the meaning of this document requires clarification, the English version will be used.

The FY05 Avaya Global Sales Compensation Policies form an integral part of the FY05 Sales Compensation Plan.

Avaya FY05 Sales Compensation Plan
Strategic Account Manager B

FY05 SALES COMPENSATION PLAN OBJECTIVE

As a member of the new integrated sales organization at Avaya you are in a unique position to make a significant contribution to the success of our company. Through your sales success against defined plan objectives you will be eligible to earn significant incentive dollars for your efforts.

The objective of the FY05 Sales Compensation Plan is to provide you with increased earnings potential for extraordinary revenue growth. This plan represents Avaya's commitment to a Pay-for-Performance culture by raising minimum performance expectations, and increasing overachievement earnings at top competitive levels. The FY05 Compensation Plan supports a new ramped year-to-date earnings model and reflects the complete Avaya solutions portfolio consistent with an integrated sales force model.

This plan provides you with a competitive earnings opportunity that rewards your part in helping Avaya to achieve its FY05 objectives. The FY05 Plan will be a key tool in helping Avaya attract and retain the most talented sales professionals in our industry. As Avaya participates in a marketplace that is fast moving, the company must continue to adapt and change the way that we approach the market. As our approach to the market changes, so must our Sales Compensation plans.

In preparing the FY05 Sales Compensation Plan, input was gathered from Sales Leaders, Sales Operations, Sales Associates, and Finance teams across the various groups of the business. This input was used to build a plan that would pay higher earnings for over achievement and drive profitable revenue growth. Our ability to effectively execute the FY05 Sales Compensation Plan across all global business groups and regions was also a key consideration in its formulation.

Avaya FY05 Sales Compensation Plan
Strategic Account Manager B

PLAN COMPONENTS

Total Target Compensation (TTC):
The target total cash compensation earned, including Base Salary and variable Target Incentive compensation, at 100% (target) attainment on all performance measures.

Pay Mix:
The ratio of base salary to target incentive, expressed to show the allocation of TTC (e.g., a plan with a 60/40 pay mix means that 60% of TTC is base salary and 40% of TTC is Target Incentive earnings).

Base Salary:
Base salary is defined as the sales associate's regular salary excluding target incentive compensation, SPIFFs, or other on-top bonuses.

Target Incentive (TI):
Sum of Incentive dollars a sales associate earns by achieving target levels of attainment (100%) on all performance measures or components in a sales incentive plan.

Performance Measures:
Components of a sales compensation plan associated with variable compensation. Performance measures are allocated a portion of the Target Incentive (e.g. Performance Measure weighting) based on their priority in support of the job's objectives. The sum of the weights of all performance measures will always equal 100%.

Threshold Level:
Minimum level of attainment (e.g., 50%, 65%, 70%) before a payout is received by a sales associate.

Accelerator Rate:
Payout rate for attainment greater than 100% of annual quota (e.g., 3X).

Avaya FY05 Sales Compensation Plan
Strategic Account Manager B

FY05 PERFORMANCE MEASURE(s)[1,2]:

Measure 1: Total New Revenue

Weighting: 100%

Payout Frequency: Monthly Payout. May vary by region (e.g., APAC)

Calculation Formula: (Cumulative YTD Achievement / Cumulative YTD Quota)

Definition: Includes the sale of all ECG Products and Applications, One- Time Billed Services (e.g., Implementation, Network Assessments, etc), all Services Contracts at 0.33 value (e.g., Point of Sales (POS) Maintenance Agreements, Renewals, New Maintenance Contracts, Managed Services, Remote Network Monitoring, Carrier Services (Committed Contract Value which is calculated using the minimum commitment of revenue guaranteed via the contract, and IP Office when sold via the direct and indirect channel to Named & Strategic Accounts.. All eligible services contract cancellations will debit the measure.

[1] All cancellations of services contracts will debit at 0.33 of remaining contract term value.

[2] Please refer to your condition sheet for specific crediting and revenue assignments.

Avaya FY05 Sales Compensation Plan
Strategic Account Manager B

FY05 ATTAINMENT AND PAYOUT CALCULATION EXAMPLE:

Formulas	Calculation Example Illustrative Client Executive Annual Quota $5,000,000 Annual Target Incentive = $50,000
1) Calculate YTD Quota Performance **YTD Quota Performance =** (Cumulative YTD Achievement / Cumulative YTD Quota)	(Cumulative YTD Achievement = $2,500,000) / (Cumulative YTD Quota thru 6 months = $2,500,000) = **100% YTD Quota Performance**
2) Calculate YTD Earned **YTD Earned =** (YTD Quota Performance * Payout Factor * Cumulative YTD Target Incentive)	(YTD Quota Performance = 100%) * (Payout Factor = 2X *50 Points) * (Cumulative YTD Target Incentive = $25,000) = **$25,000 Cumulative YTD Earned**
3) Calculate Monthly Payout **Monthly Payout** = (YTD Earned - Previous Payments)	(YTD Earned = $25,000) – (Previous Payments = ex. $20,000) = **$5,000 Monthly Payout**

Payout Rules:

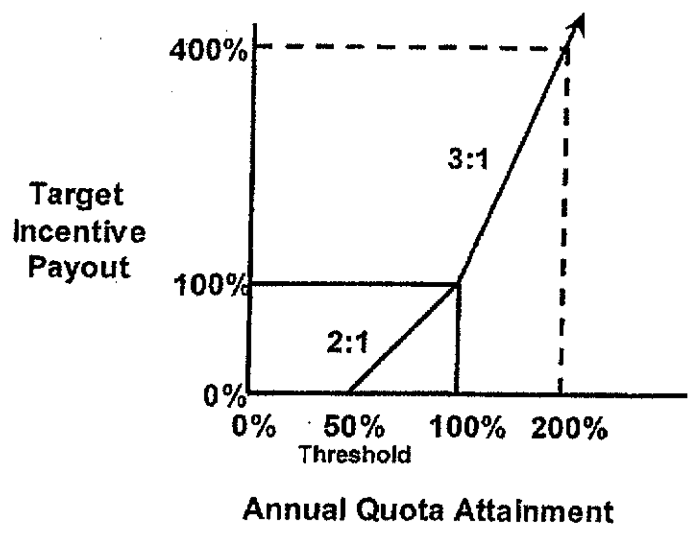
- Accelerators only apply to performance >100% of annual goal (i.e., 3X accelerator applies above 100%, not below).
- YTD Payout is capped at 125% of YTD TI until reaching 100% of annual quota. Full 3X accelerators are released after reaching 100% of annual quota.

Avaya FY05 Sales Compensation Plan
Strategic Account Manager B

PAYOUT CURVES AND MECHANICS:

Measure 1: Total New Revenue

FY05 Individual Contributor Payout Curve



Annual Earnings Table

Annual Performance	% of Target Incentive Earned	Payout Rate (% of TI per point of Attainment)
150%	250%	3.00%
145%	235%	3.00%
140%	220%	3.00%
135%	205%	3.00%
130%	190%	3.00%
125%	175%	3.00%
120%	160%	3.00%
115%	145%	3.00%
110%	130%	3.00%
105%	115%	3.00%
100%	100%	2.00%
95%	90%	2.00%
90%	80%	2.00%
85%	70%	2.00%
80%	60%	2.00%
75%	50%	2.00%
70%	40%	2.00%
65%	30%	2.00%
60%	20%	2.00%
55%	10%	2.00%
50%	0%	2.00%

Avaya FY05 Sales Compensation Plan
Strategic Account Manager B

GENERAL CREDITING GUIDELINES:

For plan participants whose revenue quota retirement is determined using one or more of the following measurements (as determined by the "FY05 Crediting Rules by Plan Type" document), credit for the sale of products and services will be made as follows:

- Products and One-Time Services: 100% at Revenue Recognition
- Committed Contract Value: (100% at Contract Confirmation) *0.33 Discount Factor

For complete crediting, revenue descriptions, and policies please see the following documents on the FY05 Sales Compensation Portal:

"FY05 Sales Compensation Portal":
http://associate2.avaya.com/sales_market/compensation/

"FY05 Summary Plan and Crediting Rules Matrix":
http://associate2.avaya.com/sales_market/compensation/2005/crediting.xls

"Revenue Measurement Descriptions and Crediting Revenue Guidelines":
http://associate2.avaya.com/sales_market/compensation/2005/revmeasurement.doc

"FY05 Sales Compensation Policies Document":
http://associate2.avaya.com/sales_market/compensation/2005/policies.doc

"FY05 MBO Guidelines":
http://associate2.avaya.com/sales_market/compensation/2005/gsmmbo.xls

APPENDIX – PLAN DOCUMENT CHANGE CONTROL

January 1, 2005 – Carrier Revenue will credit at 100% CCV as a one time service sale.

FY05 Avaya Global Sales Compensation Policies

What Every Employee Should Know

About the FY05 Sales Compensation Policies

The following policies concern the FY05 Avaya Global Sales Compensation Plans ("Plan") and are effective October 1, 2004 through September 30, 2005.

AVAYA INC. ("AVAYA") HAS THE RIGHT TO AMEND, CHANGE, OR CANCEL THE SALES COMPENSATION POLICIES SOLELY AT ITS DISCRETION AND WITHOUT PRIOR NOTICE, EXCEPT IN COUNTRIES WHERE IT IS A VIOLATION OF APPLICABLE LAW.

NEITHER THE FY05 AVAYA SALES COMPENSATION POLICIES NOR ANY OTHER MANUAL OR POLICY PUBLISHED OR DISTRIBUTED BY AVAYA IS AN EXPRESS OR IMPLIED CONTRACT FOR CONTINUED EMPLOYMENT OR EMPLOYMENT OF A SPECIFIC LENGTH OF TIME. AVAYA EMPLOYEES ARE EMPLOYEES-AT-WILL. THAT MEANS THAT AVAYA EMPLOYEES MAY TERMINATE THEIR EMPLOYMENT AT ANY TIME AND FOR ANY REASON. THAT ALSO MEANS THAT AVAYA CAN TERMINATE ITS EMPLOYEES' EMPLOYMENT AT ANY TIME AND FOR ANY REASON. EMPLOYEES OF AVAYA'S SUBSIDIARIES IN NON-US JURISDICTIONS SHOULD REFER TO ANY APPLICABLE LAWS AND LABOR AGREEMENTS.

IF YOU ARE AN EMPLOYEE OF AN AVAYA SUBSIDIARY OUTSIDE THE CONTINENTIAL UNITED STATES, THIS POLICY WILL BE IMPLEMENTED IN EACH COUNTRY THROUGH THE LOCAL AVAYA ENTITY WITH WHICH YOU HAVE YOUR LABOR OR EMPLOYMENT RELATIONSHIP ("YOUR EMPLOYER") AND PURSUANT TO LOCAL LAWS AND PRACTICES WHERE APPLICABLE. ALL REFERENCES TO AVAYA OR AVAYA INC. IN THIS DOCUMENT SHALL BE UNDERSTOOD AS A REFERENCE TO YOUR EMPLOYER.

The FY05 Avaya Sales Compensation Plans (the Plans) and the FY05 Avaya Global Sales Compensation Policies (the Policies) take effect on October 1, 2004. Both the Plans and the Policies expire on September 30, 2005, unless specifically renewed by Avaya Human Resources.

1. Plan Participation

1.1. Eligibility

- All eligible sales associates and managers will map to one of the approved platform sales job roles and corresponding compensation plans.
- Avaya reserves the right to modify or reassign job responsibilities or titles at any time.
- Only individuals in jobs that exhibit *all* the criteria below (and jobs that manage eligible jobs) will be considered eligible for sales compensation.
- Eligibility should be determined by factors that consider job function and activity, not job titles. Therefore, the following basic criteria should form the framework by which to evaluate each potential plan incumbent to determine their eligibility:
  - The incumbent *must* be in one of the Sales Organizations.
  - The incumbent *must* have personal contact with the buyer or influencer.
  - The incumbent *must* be directly accountable for specific sales by carrying individual revenue or financial responsibility.
  - The incumbent *must* provide key input into the sales process with respect to: a) access to the customer, b) persuasion of prospects, and/or c) fulfillment of customer expectations.

1.2. Effective Date for Plan Participation

- Plan Year: For qualified associates employed by Avaya as of October 1, 2004, the effective date of the FY05 Sales Compensation Plan is October 1, 2004.
- Minimum Service: Associates must participate in the FY05 Sales Compensation Plan a minimum of one calendar month before the end of the fiscal year to be eligible to receive an incentive payment.
- Plan Start: If an associate is hired, transferred or promoted on any day other than the first of the given month (i.e., 2nd through 31st), they cannot be placed on Plan until the beginning of the following month. In a situation such as this, for the days that the employee is not on Plan, based on management discretion, a draw can be given. Refer to Section 5: Draws, as well as the Schedule of Authorizations for specific details.
- General Retroactivity: No retroactive changes to FY05 Sales Compensation Plan effective date will be allowed. Similarly, no associate can be placed on a FY05 Sales Compensation Plan retroactively.
- New Hires (not receiving a non-recoverable draw): Effective date of the FY05 Sales Compensation Plan must always be on the 1st of any given month. For example, if a newly hired associate starts on the 1st of any month during the Plan Year, the associate will be eligible to participate in the FY05 Sales Compensation Plan as of the 1st of that month. If a newly hired associate starts on any day other than the 1st of the month, the associate is eligible to participate in the FY05 Sales Compensation Plan as of the first day of the *following* month.
- New Hires (receiving a non-recoverable draw): Effective date of the FY05 Sales Compensation Plan will be the 1st day of the month following the conclusion of the

non-recoverable draw. For example, if a newly hired associate starts on November 1, 2004, and is granted a non-recoverable draw for the first 3 months of employment, the effective date of the FY05 Sales Compensation Plan for this associate will be February 1, 2005.

- Transfers/Plan Change: For associates who transfer from a non-sales position to a sales position, or from one Sales Compensation Plan to another, the effective date of the transfer and the start on sales compensation (or the new Sales Compensation Plan) must be the 1st of the month. If an associate transfers on any day other than the 1st of the month, the associate is eligible to participate in the FY05 Sales Compensation Plan as of the first day of the *following* month.
- Promotions: For associates who are promoted, experience a Plan change, receive a target incentive adjustment, and/or a quota adjustment, the effective date of the promotion and/or modification to the Plan must be the 1st of a given month. For changes as noted above that occur on any day other than the 1st of the month, the associate is eligible to participate in the new FY05 Sales Compensation Plan as of the first day of the *following* month.

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2. Pay Mix, Base Salary, and Target Incentives

2.1. Definition of Terms

- Pay Mix is defined as the ratio of Base Salary to Target Incentive (TI or Incentive Base), (e.g., a 60/40 pay mix means that 60% of Total Target Compensation (TTC) is Base Salary and 40% of TTC is TI).
- Each platform job role has an associated target pay mix. The application of pay mix to the Total Target Compensation values may vary by region and country. Refer to the Human Resources Sales Compensation organization or your Regional HR Business Partner for the appropriate application of pay mix to each job role.

2.2. Application of Pay Mix

- If an associate moves from one eligible sales role into another sales role with a different Pay Mix (e.g., 80/20 to 60/40), the associate should assume the Pay Mix associated with the new sales role. As permitted by local laws, Base Salary and Target Incentive should adjust to the Target Pay Mix and Market Pay Levels associated with the new sales role. (See section 6.1. for details on Plan Closeout.)
- If an associate moves from one eligible sales role into another sales role with the same Target Pay Mix, (e.g., 60/40 role to a 60/40), as permitted by local laws, Base Salary and Target Incentive should adjust to the relevant Market Pay Level for the new job role. (See section 6.1. for details on Plan Closeout.)

3. Target Incentive Adjustments

3.1. Partial-Year Plan Participation

- Target Incentive pay rates are always based on a full fiscal year, which is defined as October 1, 2004 through September 30, 2005. For associates who have a Plan effective date after October 1, 2004, the TI will be pro-rated. For part-time sales compensated associates, the TI will be pro-rated consistent with the pro-ration of the associate's base salary. Note that associates can only be put on plan on the first day of any month (i.e. partial month participation is not allowed).
- The formula for the pro-ration calculation of Annual TI is as follows:

  Pro-Rated TI = (Actual months on Plan/Total months in year) x (Annual TI)

  Example:

Plan Effective Date	December 1, 2004
Full FY Target Incentive	$50,000
Pro-ration of TI	October 1, 2004 – November 30, 2004 = 2 months 12 (months) – 2 (months) = 10 months on Plan (10/12) x $50,000 = $41,667 (rounded up)

3.2. In-Year Change of Target Incentive Values

- If a participant in the FY05 Sales Compensation Plan has any increase or decrease to the value of their Annual Target Incentive during the plan year, the value of the Target Incentive will be pro-rated for calculation purposes.
- The calculation for pro-ration is as follows:

  [(Former TI / 12 months) x Number of Months at Former TI] +
  [(New TI / 12 months) x Number of Months Remaining in FY] = Pro-rated TI

  Example of weighted annual target incentive:

  First Period TI = $40,000; 4 months at this TI

  Second Period TI = $60,000; 8 months at this TI

  [($40,000 / 12) x 4] + [($60,000 / 12) x 8] = $53,334 (rounded up)

- Note: Closeout should only apply to plan changes. If a participant in the FY05 Sales Compensation Plan moves to a different sales compensated job, the first (original) plan will be closed out and the individual will be re-started on a new plan.

4. Quotas

4.1. Quota Setting

- Global Sales Leadership and Regional/Area Sales Leaders, as defined by each Sales organization, are accountable for establishing individual quotas. Quotas will be communicated to the Sales Compensation Administration organization and sales associates by the sales organization to enable calculation and payment of incentive payments in a timely manner.

4.2. Quota Adjustment during Plan Year

- Approvals: Quota adjustments may be necessary after the start of the Plan year (e.g., error correction, redefinition of quota, etc.). Follow the Schedule of Authorizations for appropriate level of management approval.
- Quota Changes without a Plan Closeout: If increases or decreases to quotas occur and the plan is not closed out and restarted, there is by nature an increase or decrease to the quota attainment. This change in attainment may not be overridden in any way. When increases or decreases of quota are implemented *without* a plan closeout, the increase amount or decrease amount should be applied as a prorated amount for the remaining time on plan. *Again, there are no policies that sanction the use of alternative or otherwise unapproved transition or bridging methodologies.* Note: The Schedule of Authorizations governs any resulting payments or deficits.
- The table below illustrates an example of an *increase* to Quota during the plan year and the resulting effect upon attainment and earnings:

  Assumptions: Annual Target Incentive = $80,000, Quota Adjustment made halfway through the fiscal year.

Item	Pre-Adjustment	Post-Adjustment
Quota	$10,000,000	$15,000,000
YTD Performance	$5,000,000	$5,000,000
YTD Attainment	50%	33.3%
YTD Earned	($80,000 * 50%) = $40,000	($80,000 * 33.3%) = $26,640
Net Result of Quota Increase	N/A	($40,000 - $26,640) = $13,360 Recoverable Deficit

4.3. Types of Quotas

- Individual quotas are the primary type of quotas that will be used in FY05. Team quotas will be allowed on an exception basis and must be approved per the Schedule of Authorizations.

5. <u>Incentive Payouts</u>

5.1. Financial Result Determination

- Avaya Corporate Finance verifies financial results, in accordance with local country guidelines. Self-reported or manual results will only be allowed for FY05 Sales incentive payouts on an exception basis and must be approved per the Schedule of Authorizations. (Refer to 5.3 for detail)
- The resource for financial results, which are the basis for determining incentive payouts, is financial data from SAP Business Warehouse and sales out data from Corporate Finance. Because Avaya Corporate Finance and IT certifies this data, the incentive payouts resulting from this financial data are considered certified by Avaya.
  - Any other results not acquired through SAP Business Warehouse must be separately approved in accordance with the Schedule of Authorizations.

5.2. Payment Requirements

- In order to receive incentive payments, participants in the FY05 Sales Compensation Plan <u>must</u> have a signed up-to-date Condition Sheet on record with their manager, and/or local Compensation Manager. Incentive payments <u>will be withheld</u> for those Plan participants who do not have signed condition sheets on record, except where it is a violation of local country law.
- In the event that changes are made to any information contained on an associate's Condition Sheet (e.g., quota, TI, etc.) a new Condition Sheet must be prepared, signed and submitted <u>prior</u> to the beginning of the month in which the change is effective. No changes in payout will be made until the new Condition Sheet is submitted to and accepted by the local Compensation Manager.
- Any current period payments will be net of deficits or overpayments.
- Any YTD or Year-End deficit or overpayment of incentive will be deducted from future incentives earned until paid-in-full. The maximum timeframe for repayment is 3 months. Where applicable, recoverability of overpayments is subject to local laws.

5.3. Payment Contingencies

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- Incentive payments are calculated and paid on a regular basis (monthly or quarterly, as appropriate). If applicable financial results are not available or delayed, an advance payment for earnings may be made. *Recoverable* advance payments are subject to recovery at the end of the fiscal year or such other time as settlement occurs. See Schedule of Authorizations for necessary approvals.
- In the event that there is an outstanding amount owed after the final FY incentive payment, the associate is responsible to repay the overpayment. The terms for repayment must be put into writing by their Manager, and signed by both the associate and their Manager. The maximum timeframe for repayment is 3 months. Where applicable, recoverability of overpayments is subject to local laws.

- Avaya reserves the right to not consider, for the purpose of incentive payment calculation, any transaction that results in a negative gross margin. A negative gross margin results when the cost is higher than the revenue. In other words, the product or service is sold at a margin loss.
  - In the event that any single incentive payout is greater than or equal to $50,000 (or the non-US currency equivalent), approval is required by the Group Finance Director as well as the appropriate Group Sales VP [See Schedule of Authorizations].
  - In the event that cumulative YTD actual incentive payments are greater than 200% of an associate's annual TI, monthly payout approval is required per the Schedule of Authorizations.

6. <u>Plan Movement</u>

6.1. Eligible associates' movement from one eligible sales compensation plan to another

- If an associate who is currently paid on an FY05 Sales Compensation Plan changes job role, resulting in a need to change to another approved FY05 Sales Compensation Plan, the associate <u>must be closed out</u> of the current Plan at the end of the month prior to the effective date of the change (see Section 9 for Closeout Information) and re-started on the new FY05 Sales Compensation Plan on the first of the following month. The job title change will only be effective on the 1st of a given month (see Section 1.2. for more information).
- In the case of a change in the annual TI value, the TI adjustment will occur based on the local Region's method for assigning/calculating TI (i.e., local laws, pay mixes, and market data), and pro-rated as defined in Section 3.
- If a job title change results in movement onto the FY05 Sales Executive Compensation Plan (Third and Fourth-Line Sales Managers), approval must be obtained from the Human Resources Sales Compensation organization, along with the appropriate Sales Leadership.

6.2. Movement from Sales Compensation to STIP

- If an associate is no longer eligible for Sales Compensation due to a move to a non-sales position (see Eligibility Section 1.1.) the Sales Compensation Plan <u>must</u> be closed out at the end of the month in which the transfer is effective (i.e., Transfers should be effective the last day of the month).
- The Non-Sales Target Incentive adjustment will occur based on the corporate level of the STIP eligible job, per Avaya guidelines on percentage STIP Target Bonus.
- Due to the difference in Total Target Compensation pay structure in Sales Compensation eligible and STIP eligible jobs, it may be necessary to assess, and potentially adjust, an associate's base salary when making this type of move. Base Salary, Target Incentive and Total Target Compensation will always be evaluated from a market-based pay perspective. Please contact the local Human Resources Business Partner for review. *<u>Note:</u> Local laws will apply if adjusting base salaries.*
- Following the closeout of the Sales Compensation Plan, the associate will be eligible for a pro-rated incentive under the Avaya Short Term Incentive Program (STIP), subject to the STIP policies.

6.3. Movement from STIP to Sales Compensation

- If an associate becomes eligible for Sales Compensation due to a move to a sales position (see Eligibility Section 1.1.) the Plan participation guidelines will apply (see Effective Date section 1.2.).
- Due to the difference in Total Target Compensation pay structure between STIP-eligible jobs and Sales Compensation-eligible jobs, it is necessary to assess, and potentially adjust, an associate's base salary when moving from STIP to Sales Compensation. Base Salary, Target Incentive and Total Target Compensation will always be evaluated from a market-based pay perspective. Please contact Human

Resources Sales Compensation for review. Note: *Local laws will apply if adjusting base salaries.*

- Temporary or short-term assignments (assignments of less than 3 months in duration) into a Sales Compensation eligible position are not eligible for Sales Compensation. In such instances, the associate will be eligible for the Avaya STIP. Any questions in this regard should be referred to the Human Resources Sales Compensation organization.

6.4. Clarification on Different Types of Plan Movement

6.4.1. Role, Account, or Quota changes that *require a plan stop/restart*

- Movement of an associate from one eligible sales compensation role to another eligible sales compensation role necessitates a plan closeout and restart.
- Movement of an associate from one distinct set of responsibilities or accounts to another necessitates a plan closeout and restart.
- Movement of associate from one distinct quota to another distinct quota necessitates a plan closeout and restart. As in the example below, this includes instances when an associate moves from Account A to Account B.
- When an associate acquires significant incremental quota the plan may need to be closed out and restarted. In these cases, the incremental quota interferes with the accurate measurement of performance of the associate. Sales Management has the latitude to determine that a more accurate measurement of performance would occur under a plan restart. As noted below, these policies specifically prohibit ad-hoc transition or bridging methodologies that conflict with these quota change policies.
- Illustrative Examples:
  - Moving from a sales manager position to an individual contributor sales position (or vice versa).
  - Moving from a Team Goal to an Individual Goal (or vice versa).
  - Moving from Account A to Account B.
  - Beginning the year with a $1,000,000 quota that is increased to $5,000,000 halfway through the year.

6.4.2. Role, Account, or Quota changes that *require a pro-ration of performance*

- When an associate acquires or relinquishes minor incremental (up or down) responsibilities, accounts, or portions of accounts, this necessitates blending (prorating) goals and/or performance measurement.
- Illustrative Examples:
  - Quota is simply adjusted up or down on the same set of accounts/territory.
  - A sales associate assumes additional accounts/territory coverage (incremental to their current responsibility) (or vice versa).
  - A sales manager hires new individual contributors.
- These policies specifically prohibit ad-hoc transition or bridging methodologies that conflict with these quota change policies. Any change to these policies

would require re-approval of the FY05 Sales Compensation Policies per the Schedule of Authorizations.

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7. Draws

7.1. Recoverable Draws

- A recoverable draw is defined as an advance paid to a sales associate against future earnings. By definition, a true-up will occur once future earnings are quantified.
- Recoverable draws will be authorized on an exception basis only.
- Associates receiving a recoverable draw must sign documentation outlining repayment responsibilities, provided by sales compensation administration.
- All recoverable draws must have approvals per the Schedule of Authorizations.
- Recoverable draws will be trued-up from the next earning period and must be paid back to Avaya within 3 months of the recoverable draw date.

7.1.1. Recovering the Draw

- If an associate is approved for a recoverable draw and s/he leaves Avaya for any reason (e.g., resigns, force management) before the draw amount is earned or paid back, the outstanding amount must be repaid to Avaya. The total amount owed to the company will be withheld from any final payment due to the associate in accordance with corporate policy and any applicable law covering separations from Avaya.
- Refer to your local Compensation Manager for recovery process.

7.2. Non-Recoverable Draws

- A non-recoverable draw, also referred to as a guarantee, is defined as a guaranteed monetary amount, over a specific period of time, which is available to external new hires into a sales compensated position. Not all external new hires receive a non-recoverable draw. Use of this policy is at the discretion of the recruiting organization and the hiring manager.
- Non-recoverable draws will be authorized for external new hires only. Hiring managers are authorized to approve a non-recoverable draw for an external new hire in conjunction with the HR Sales Compensation organization.
- Sales associates who transfer from another sales-compensated or non-sales-compensated position within Avaya are not eligible for a non-recoverable draw.
- The maximum period for a non-recoverable draw is 3 months.
- Pro-Rated Non-Recoverable Draws: Non-Recoverable draws will be prorated for external new hires that do not start on the 1st day of the month. Thus, if an associate starts on the 15th of the month, they are eligible for 15 days of the draw for the first month. Note: Because of the first month pro-ration, the total draw value will not equal three months of draw value.
- Non-recoverable draws are not to exceed a maximum monthly amount as follows:

- *Standard* Non-Recoverable draws set the maximum monthly amount at 50% of the monthly Target Incentive. The hiring manager (minimum Director) and sales recruitment partner may approve a Standard Non-Recoverable Draw.
- *Non-Standard* Non-Recoverable draws set the maximum monthly amount at a level up to 100% of the monthly Target Incentive. Authorization of a Non-Standard Non-Recoverable Draw requires approval from the hiring manager (minimum Director) and sales recruitment partner.
- Calculation of the monthly value for a Non-Recoverable Draw are as follows:

Full 3-Month Draw	Maximum Standard Non-Recoverable Draw	Example: Annual TI = $48,000 Formula: ((Annual Target Incentive) / 12 months) * (.5) Calculation: ($48,000 / 12 months) * (.5) = $2,000 per month
	Maximum Non-Standard Non-Recoverable Draw	Example: Annual TI = $48,000 Formula: ((Annual Target Incentive) / 12 months) Calculation: ($48,000 / 12 months) = $4,000 per month
Pro-Rated (<3 Month) Draw	Pro-Rated Standard Non-Recoverable Draw	Example: Annual TI = $48,000 Formula: ((Annual Target Incentive) / 12 months) * (.5) Calculation: ($48,000 / 12 months) * (.5) = $2,000 per month Partial Full-Month Pro-Ration: (start day 15 of a 30-day month) = ($2,000) * (15/30) = $1,000 Full Value of Pro-Rated Standard Non-Recoverable Draw: ($1,000) + ($2,000) + ($2,000) = $5,000
	Pro-Rated Non-Standard Non-Recoverable Draw	Example: Annual TI = $48,000 Formula: ((Annual Target Incentive) / 12 months) Calculation: ($48,000 / 12 months) = $4,000 per month Partial Full-Month Pro-Ration: (start day 15 of a 30-day month) = ($4,000) * (15/30) = $2,000 Full Value of Pro-Rated Non-Standard Non-Recoverable Draw: ($2,000) + ($4,000) + ($4,000) = $10,000

8. MBOs

- MBOs will be used only for those Sales Compensation eligible job roles that are deemed appropriate by Sales Leadership and the Human Resources Sales Compensation organization.
- MBOs are paid on a quarterly or semi-annual basis, as stated in the Plan Document for each individual job role.
- MBO attainment and payout has a threshold (minimum performance/payout) of 50% and are capped at 125%. Refer to Plan Documents for specific payout details.
- An associate must be on Plan the last day of the measurement period to receive a payout against attainment of the defined MBO. If the associate is not on the same sales compensation plan as they were at the beginning of the measurement period, the MBO earnings potential is forfeit.

8.1. New Hire/Transfer into job role with MBO component

- If an associate is a new hire or transfer into a job role that contains an MBO component, s/he is eligible for a pro-rated MBO payout in the new job role. The pro-ration will be based on the number of days in the MBO measurement period that the associate is in the new job role, similar to the pro-ration of the Target Incentive (see Section 3).
- Following is an example of the calculation of pro-ration of the MBO component (Note: Actual days on Plan include working days, weekends and holidays, 182 days in first half of the FY and 183 days in the second half of the FY):

Plan Effective Date	December 1, 2004
Full FY MBO Component Target Incentive	$20,000
Full Quarter MBO Target Incentive	$10,000
Pro-ration of MBO component	• October 1, 2004 – November 30, 2004 = 61 days • 92 days in quarter-61 days before plan start = 31 days on Plan during the first quarter • Pro-Rated Target MBO Value = (31/92) x $10,000 = $3,370 (rounded up)

8.2. Separation/Transfer out of job role with MBO component

- If an associate separates from Avaya or transfers out of a job role that has an MBO component, that associate is not eligible to receive payment against that MBO component for that measurement period. An associate must be on Plan the last day of the measurement period to receive a payout against attainment of the defined MBO.

8.3. MBO Payout for Absent or Late Objectives

- Payout of MBOs that are not established and approved by the end of the <u>first</u> month of the measurement period (e.g., by the end of October for 1Q05) *will be limited* to a top payout of <u>50%</u> of the value of the MBO performance measure. In cases where objective setting does not happen until late in the quarter, management may limit payout to <u>0%</u>.

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9. <u>Plan Closeout</u>

9.1. General Closeout Policies

- MBOs are paid out according to policy. An associate must be on Plan the <u>last</u> day of the measurement period to receive a payout against attainment of the defined MBO.
- Order cancellation: If an order cancels within 180 days after the plan closeout date, any incentive or bonus related to the cancelled order will be adjusted back through the associate's paycheck, subject to applicable law.
- In cases where a deficit is owed back to the company, if the associate is no longer on the Avaya payroll, then the associate must pay Avaya by check.
- Final Incentive Payout Date: The target date for closeout payments is the processing month in arrears of the closeout date.
    - Example: Closeout date of June 10. June finals are processed in July. Final closeout is processed during July, final payment in August.
- Involuntary termination: Participants who are involuntarily terminated, except in the case of force reduction, disability or death will forfeit any unpaid incentives, except in countries where it is a violation of applicable law.

9.2. Plan Closeout Situations

- Plan closeout is required in cases of:
    - Transfer to a different Sales Compensation Plan
    - Transfer to a STIP eligible compensation plan
    - Termination/separation from Avaya (e.g., resignation, retirement, force reduction, death, company initiated separation)
    - Disability (refer to local benefits policies for treatment during disability)

9.3. Plan Closeout Scenarios

- An associate may be closed out of a plan for the following reasons: plan change, certain quota changes (refer to Quota policies section 4), termination, FMP, etc.
- There are four scenarios for YTD compensation plan structure closeout:

Sample Associate Information for the Examples Below:

Annual Target Incentive:	120,000
Monthly Target Incentive:	10,000
Annual Quota:	1,200,000
Monthly Quota:	100,000
Threshold:	50%

Scenario 1. An associate is closed out and YTD performance is below the threshold, therefore apply YTD payout mechanics. There is no payout if performance < YTD threshold (e.g., 50%).

Data	Value	Formula
Q1 Quota	300,000	(Annual Quota/4 = 1,200,000/4 = 300,000)
Q1 Sales	141,000	
YTD Target Incentive	30,000	
YTD Performance	47%	(141,000 / 300,000)
YTD Threshold	50%	
YTD Incentive Earned	0	TI earned in October and November
Closeout Incentive Payment	0	

Scenario 2. An associate is closed out and YTD performance is between the threshold and 100% YTD performance, therefore apply YTD payout mechanics.

Data	Value	Formula
Q1 Quota	300,000	(Annual Quota/4 = 1,200,000/4 = 300,000)
Q1 Sales	225,000	
YTD Target Incentive	30,000	
YTD Performance	75%	(225,000 / 300,000)
YTD Threshold	50%	
YTD Incentive Earned	0	TI earned in October and November
Closeout Incentive Payment	15,000	(75-50) x 2% x 30,000

Scenario 3. An associate is closed out and YTD performance is greater than 100% (annual performance <100%), therefore pay 1:1 on YTD overachievement below 100% of annual performance.

Data	Value	Formula
Q1 Quota	300,000	(Annual Quota/4 = 1,200,000/4 = 300,000)
Q1 Sales	475,000	
YTD Target Incentive	30,000	
YTD Performance	158%	(475,000 / 300,000)
YTD Threshold	50%	
YTD Incentive Earned	0	TI earned in October and November
Closeout Incentive Payment	47,500	(158.3% x $30,000)

Scenario 4. An associate is closed out and annual performance is greater than 100%, therefore pay incentive using annual plan mechanics.

Data	Value	Formula
Q1 Quota	300,000	(Annual Quota/4 = 1,200,000/4 = 300,000)
Q1 Sales	1,380,000	
YTD Target Incentive	30,000	
Annual Target Incentive	120,000	
YTD Performance	460%	(1,380,000 / 300,000)
Annual Performance	115%	(1,380,000 / 1,200,000)
YTD Threshold	50%	
YTD Incentive Earned	0	TI earned in October and November
Closeout Incentive Payment	174,000	120,000 + (115-100) x 3% x 120,000)

9.4. In-Month Plan Closeout Situations

- The following policy applies to associates coming off of a sales compensation plan within a month. This policy applies only to revenue-based measures (MBOs covered in separate policy).
  - This policy applies to any situation where a plan would be closed-out within a calendar month (e.g., incumbents transferring from one sales role to another (plan change), voluntary or involuntary termination of employment).
- Sales incentive earnings for any associate leaving within a month are prorated to the number of days the associate was on plan for their final eligible month. The calculation is based on the pro-ration of days on plan, multiplied by the full final month incentive earnings, based on full month performance.
  - Formula:
    - (Percent of Month on Plan) * (Full Month Plan Earnings) = Closeout Payment
  - Illustrative Calculation Example:
    - Incumbent leaves the business on day 7 of a 28-day month.
    - Percent of Month on Plan: 7/28 = .25
    - Full Month Plan Earnings (ex.): $10,000
    - Closeout Payment: ($10,000) * (.25) = $2,500

9.5. Closeout Treatment of Employees on Leave

- In order to maintain consistency of treatment, maintain the integrity of sales compensation, and allow for an appropriate level of discretion, the following policy governs the treatment of sales associates that take FMLA or any other form of disability leave:
  - When an associate goes out on leave, the ASVP (or equivalent Second Line Manager) has 30 days of discretion to determine the nature and term of the leave (i.e., short or long term) and decide whether or not the associate will stay on plan during the first 30 days of leave. The ASVP has discretion for leaves less than 30 days to stop or continue the associate's eligibility on plan.

- o If the associate is not back from leave within the 30-day window, the individual will automatically be closed out of their compensation plan. If the associate is taken off plan, all other closeout policies apply (e.g., MBOs, collection of outstanding deficits).

9.6. Closeout in FMP Situations

- All general closeout policies will apply to any sales associate affected by force reduction, and performance measurement (applied to variable earnings) will stop effective the date of notification (where local law allows).
- In instances where an associate is separated from Avaya early in the Fiscal Year, and quotas are not assigned or communicated, Avaya reserves the right to close out incentive payments at a value up to 100% of the pro-rated Target Incentive value.

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10. Other Policies

10.1. Large Sale Adjustments

- In the event that a single order greater than or equal to 50% of an associate's total annual quota is credited, the applicability of that order to the associate's quota retirement, as well as the payout associated with that order, must be reviewed in accordance the Schedule of Authorizations.
- If an unexpected windfall sale occurs, which generates credit in excess of 25% of the associate's total annual quota, at management discretion, it may paid on the following schedule:
  - o If attainment against annual goal is less than 120%, 100% of the credit will retire the primary quota, and the primary quota will be increased by 85% of the windfall credit (i.e., incrementally increasing attainment by 17.6%).
  - o If attainment against annual goal is greater than 120%, then 15% of the total windfall credit will retire the primary quota, with no corresponding increase to quota.

10.2. Third Party Rewards

- No employee participating in the FY05 Sales Compensation Plan should accept payment, in monetary form or otherwise, from a Partner, Integration Partner or any other third party as a reward for any transaction. The acceptance of any form of payment from a third party could result in disciplinary action, up to and including termination.

10.3. Other

These policies are proprietary and must be handled according to Company instructions for restricted documents. These policies form an integral part of the FY05 Sales Compensation Plan.

Avaya reserves the right to: (1) amend, change, or cancel the Sales Compensation Plan or Policies or any elements of the Plan solely at its discretion; and (2) revise assigned

territories, revenue quotas, reduce, modify, or withhold compensation based on individual/team performance or Avaya determination of special circumstances, with or without prior notice, and either retroactively or prospectively, except in countries where it is a violation of applicable law.

ANY EMPLOYEE MANIPULATION OR OTHER MISUSE OF THE PLAN OR POLICIES IS A VIOLATION OF THE CODE OF CONDUCT, INCLUDING BUT NOT LIMITED TO CODE OF CONDUCT PROVISIONS RELATING TO COMPANY RECORDS AND COMPANY FUNDS, AND CAN RESULT IN DISCIPLINARY ACTION INCLUDING DISMISSAL AND CIVIL OR CRIMINAL PROSECUTION. MANIPULATION OR MISUSE INCLUDES, BUT IS NOT LIMITED TO MISREPRESENTING OR OVERSTATING SALES; FAILING TO TIMELY SUBMIT CUSTOMER REQUESTS/ COMPLAINTS OR ADJUSTMENTS; AND TAKING CREDIT FOR REVENUES OR SALES OUTSIDE ASSIGNED RESPONSIBILITIES.

In the event of any conflict or inconsistency between any of the provisions of these policies and applicable local laws in force in any jurisdiction in which these policies are being implemented, the applicable laws shall prevail. The rest of the policies not so affected shall continue to apply, unless such amendments require any other policy to be modified, in which case Avaya reserves the right to so modify such policies to the extent permitted by law.

This document may be translated into local languages. If the meaning of this document requires clarification, the English version will be used.

11. Schedule of Authorizations

1. Sales Compensation Plans, which include but are not limited to Plan Components, Eligibility, Incentive Weightings, Payout Factor and Policies. This includes Compensation Mix or Total Target Compensation decision (TTC)	• VP Global Sales Operations, VP Global Compensation, VP Global Sales Finance (with review from VP Global Sales, VP Senior HRBP): ➢ Financial Review must include statement of measurement capability for payout purposes, and a affordability analysis with linkage to Financial Plan. ➢ HR review must include business condition requiring change, behavior impacts, and industry/market comparative intelligence.
2. Special Incentive Award Program administered via Sales Comp Process	• **VP Global Sales Operations**, Global Sales Finance VP and **Direct Report to VP Global Sales (with review from VP Sales Compensation Management and VP Senior HRBP).**
3. Plan Agreements/Condition Sheets (as required).	• Two levels of supervisor approval.
4. Quota Adjustments due to reassignment, promotion, or position change that <u>do not result in a net change to overall CE/SM/ASVP quota.</u> New condition sheets must be approved.	• Two levels of supervisor approval.
5. Quota Adjustments regardless of job title or level that result in an aggregate quota reduction or increase. For example: • CE/SM quota reduced without offsetting increase in other CE/SM's quota • Global account or ASVP quota reduced without offsetting increase to other Global Account or ASVP quota • Country VP quota reduced without offsetting increase in other country VP's quota. *Note: New condition sheets must be approved.*	• First Approvals: **Direct Report to VP Global Sales, Regional Operations Director, Regional** Finance Director. • Final Approvals (after first approvals are secured): VP Global Sales Operations, VP Global Sales Finance. o If changes are global in nature, move to Final Approvals as primary approvers.
6. Recoverable Draw/Recoverable Advance on Compensation Payments.	• VP Sales Compensation Management and **Regional Sales VP Direct Report.**
7. Non-Recoverable Draw. • For new hires only • Time period not to exceed 3 months	• Standard Non-Recoverable Draw (Up to 50% of Monthly Target Incentive): ➢ Hiring Manager (minimum Director) and the Sales Recruitment Partner. • Non-Standard Non-Recoverable Draw (Up to 100% of Monthly Target Incentive): ➢ Hiring Manager (minimum Director) and the Sales Recruitment Partner.
8. Appeals for revenue credit without Avaya revenue recognition	• VP Sales Compensation Management , **VP Global Sales Operations,** Sales Regional Finance Director and **Regional Sales VP.**

9. Incentive Payment Approval. Data accompanied by: • Quota • % Attainment • Calculation • All necessary comments	• **Single Payment up to US $50,000.** > Sales Comp Administration Team Approval. • **Payment between US $50,000 and US $100,000.** • Approval of Sales Regional Finance Director and **Regional Sales VP.** • **Payments** > US $100,000 and/or YTD Incentive Payment over 200% of Target Incentive. > Approval of VP Global Sales, **VP Global Sales Operations**, and Global Sales Finance VP.
10. Payment associated with a single order that is greater than or equal to 50% of the associate's annual quota.	• Sales Regional Finance Director and **Direct Report to VP Global Sales.**
11. Use of Manual/Self-Reported Financial Results for compensation purposes.	• Sales Regional Finance Director and Regional Sales Operations Director.
12. Team Quotas	• **VP Global Sales Operations, Direct Report to VP Global Sales.**

12. Glossary of Terms

Base Salary	An associate's regular salary excluding incentive compensation, or other on-top bonuses.
Non-Recoverable Draw (Guarantee)	Also referred to as a guarantee, this is defined as a guaranteed monetary amount, over a specific period of time that is available to new hires into a sales compensated position.
Pay Mix	The ratio of Base Pay to Target Incentive.
Quota	Also referred to as Target, this is the monetary goal of sales set for each sales associate. Target Incentive payout is based on the level of attainment of the individual quota.
Recoverable Draw	An advance paid to a sales associate against future earnings. By definition, a true-up will occur once future earnings are quantified
Target Incentive (Incentive Base, Variable Salary)	Incentive dollars a sales associate earns by achieving target levels of performance (quota) on all performance measures or components in the sales incentive plan.
Total Target Compensation	Sum of an associate's Base Salary and Target Incentive.

13. Change Controls

- Closeout Policies Updated January 1, 2005.
- SOA updated to include VP Global Sales Operations (April 2005)

- SOA updated to remove Finance approval for Recoverable Draws (April 2005)
- Updated SOA approval list (July 2005)
- Updated SOA to include Director approval for non-recoverable draws (July 2005)

FY2005 Sales Compensation - Revenue Measurement Descriptions and Crediting Guidelines
Version Date: 1 August, 2005

AVAYA INC. ("AVAYA") HAS THE RIGHT TO AMEND, CHANGE, OR CANCEL THE SALES COMPENSATION POLICIES SOLELY AT ITS DISCRETION AND WITHOUT PRIOR NOTICE, EXCEPT IN COUNTRIES WHERE IT IS A VIOLATION OF APPLICABLE LAW.

NEITHER THE FY04 AVAYA SALES COMPENSATION POLICIES NOR ANY OTHER MANUAL OR POLICY PUBLISHED OR DISTRIBUTED BY AVAYA IS AN EXPRESS OR IMPLIED CONTRACT FOR CONTINUED EMPLOYMENT OR EMPLOYMENT OF A SPECIFIC LENGTH OF TIME. AVAYA EMPLOYEES ARE EMPLOYEES-AT-WILL. THAT MEANS THAT AVAYA EMPLOYEES MAY TERMINATE THEIR EMPLOYMENT AT ANY TIME AND FOR ANY REASON. THAT ALSO MEANS THAT AVAYA CAN TERMINATE ITS EMPLOYEES' EMPLOYMENT AT ANY TIME AND FOR ANY REASON. EMPLOYEES OF AVAYA'S SUBSIDIARIES IN NON-US JURISDICTIONS SHOULD REFER TO ANY APPLICABLE LAWS AND LABOR AGREEMENTS. IF YOU ARE AN EMPLOYEE OF AN AVAYA SUBSIDIARY OUTSIDE THE CONTINENTIAL UNITED STATES, THIS POLICY WILL BE IMPLEMENTED IN EACH COUNTRY THROUGH THE LOCAL AVAYA ENTITY WITH WHICH YOU HAVE YOUR LABOR OR EMPLOYMENT RELATIONSHIP ("YOUR EMPLOYER") AND PURSUANT TO LOCAL LAWS AND PRACTICES WHERE APPLICABLE. ALL REFERENCES TO AVAYA OR AVAYA INC. IN THIS DOCUMENT SHALL BE UNDERSTOOD AS A REFERENCE TO YOUR EMPLOYER.

CONTENTS

Introduction and General Notes

Summary: This document describes those elements being measured and retiring quota for each automated revenue measurement used in FY2005 Sales Compensation Plans. Please contact your local Sales Operations Manager for a description of revenue measures using manually generated results.

Sales associates should use this document in conjunction with the following others in order to gain a comprehensive picture of the pay components, crediting rules, and revenue measures used in FY2005 Sales Compensation Plans:

- *FY2005 Sales Compensation Plan Documents*: summary of plan designs and payout mechanics (Information coming soon!).
- *FY2005 Sales Compensation Policies Document*: summary of governing Sales Compensation policies (Information coming soon!).
- *Summary Plan and Crediting Rules Matrix*: summary of pay components, regional eligibility, pay component weightings, and crediting rules by plan title (Information coming soon!).
- *Individual Sales Associate Condition Sheets*: summary of individual-specific attributes of an associate's compensation plan: assignments, pay data, quotas, etc.

All revenue measurements described in this document are quota-based and will be processed on a monthly schedule (except where payments are processed quarterly for certain countries in APAC).

Associates will generally get credit for sales of the elements of each revenue measurement used in their assigned compensation plan. Only sales to the associates' specific account/territory assignments (as documented in condition sheets) will retire quota (considering applicable revenue credit exclusions as described below). Valuation of those sales will be as described below.

Valuation of Sales for Quota Retirement

The following table describes how elements of revenue measurements will be valuated for quota retirement.

Billed Product and Services		
Type of Revenue Measured	**Valuation for U.S. sales**	**Valuation for International sales**
Billed product and billed services revenue sold directly to end customer	The value of revenue recognized by Avaya. Net New Services contract value discounted at 33%.	
Billed product and billed services revenue sold *thru* Alliance Partners		
Billed product and billed services revenue sold *with* Alliance Partners		
Billed product revenue sold indirectly in to Business Partners and/or Distributors	Valued at: • 50% off National Price list (NPL) for Strategic Accts • 40% off NPL for Region Named, Federal, and SLE Accounts • 30% off NPL for Territory/Growth Accounts	Value of cost to reporting Distributor (generally 40-50% off National Price List)
Billed services revenue sold indirectly in to Business Partners and/or Distributors	The value of revenue recognized by Avaya. Net New Services contract value discounted at 33%.	
Billed product revenue sold indirectly out to Dealers and/or Re-sellers	Valued at: • 50% off National Price list (NPL) for Strategic Accts • 40% off NPL for Region Named, Federal, and SLE Accounts • 30% off NPL for Territory/Growth Accounts	Value of cost to reporting Distributor (generally 40-50% off National Price List)
Billed services revenue sold indirectly out to Dealers and/or Re-sellers	The value of revenue recognized by Avaya. Net New Services contract value discounted at 33%.	

FY2005 Sales Compensation - Revenue Measurement Descriptions and Crediting Guidelines
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Billed product revenue sold <u>indirectly</u> out to end customers	Valued at: • 50% off National Price list (NPL) for Strategic Accts • 40% off NPL for Region Named, Federal, and SLE Accounts • 30% off NPL for Territory/Growth Accounts	Value of cost to reporting Distributor (generally 40-50% off National Price List)
Billed services revenue sold <u>indirectly</u> out to end customers	The value of revenue recognized by Avaya. Net New Services contract value discounted at 33%.	
Extreme Network Sales sold directly to end customer	The value of revenue recognized by Avaya	
Extreme Network Sales sold indirectly	Valued at 35% of NPL	
Refurbished equipment sold directly and indirectly	Valued at: • 50% of billed revenue for eligible plans	Not applicable

Services Contract Value	
Type of Revenue Measured	**Valuation for all sales made globally**
Committed Services Contract value sold directly to end customer	Net New Incremental Total Services contract value: (monthly recurring revenue x terms of contract) – (cancelled recurring revenue x cancelled terms of contract) x 33% discount factor
Committed Services Contract value sold *through* Alliance Partners	
Committed Services Contract value sold *with* Alliance Partners	
Committed Services Contract value sold indirectly to end customers	

Avaya Total Solution Measure
(Used in GSM compensation plans; typically acts as Measure 1.)

Element Description	Product Identifier	Notes
	Product Revenue	
ECG Product Revenue	Appliances – Product Node Level 5 PI01200000	Excludes Tenovis profit centers: 20001496, 20001497, 20001498, 20001499, 20001500, 20001501, 20001502, 20001503, 20001504, 20001505, 20001506, 20001507, 20001508
	Applications – Product Node Level 5 PI01300000	Excludes Tenovis profit centers: 20001509, 20001510, 20001511, 20001512, 20001513
	Converged Systems Division – Product Node Level 5 PI08000000	
	Sls Opns Mktg Other – Product Node Level 5 PI01A00000	Excludes Tenovis profit centers: 20001514, 20001515, 20001516, 20001526, 20001527, 20001528, 20001529, 20001530, 20001531, 20001532, 20001533, 20001534, 20001535, 20001536, 20001537, 20001538, 20001539, 20001540, 20001541, 20001542, 20001543, 20001544, 20001517, 20001518, 20001519, 20001520, 20001521
IP Office Product Revenue	PC 20000644, 20001469, 20001481	Only certain GSM plans will get credit for sales of IP Office products. Review your condition sheet and/or contact your local Sales Operations Manager to determine if you will receive credit for IP Office sales.
	Services Contract Value	
Net New Incremental Contract Value for Management Services Maintenance	Product ID N/A Tracked manually for International.	• Excludes Tenovis profit centers: 20001485, 20001486, 20001487, 20001488 • Contract Value for all maintenance will be discounted at 33% unless otherwise noted • Contract Value for auto-renewed contracts will be excluded.

Services Annuity Revenue
(Used in GSM Compensation Plans; typically acts as either Measure 1 or Measure 2.)

Element Description	Product Identifier	Notes
Total recognized revenue for Management Services	PI03110000	• Excludes profit centers 20001461 (Expanets) & 20001485 (Tenovis) • Revenues related to Auto-renewal of Services contracts will be included and credited. • All cancellations will be included. • Direct and indirect sales will be included. • Annually pre-paid Maintenance Contract revenue will be amortized over monthly periods and recognized by Avaya (hence retire quota) on a monthly basis.
Total recognized revenue for Dedicated Tech	20001040	
Total recognized revenue for RNMS	20001415	
Total recognized revenue for Business Communication Consulting	20001457	
Total recognized revenue for Custom Managed Services	PI03410000	
Total recognized revenue for Remote Network Operations	PI03420000	
Total recognized revenue for Hosted Solutions	PI03430000	
Total recognized revenue for Spectel	PI03440000	

ECG Product/Application Revenue

(Used in GSM compensation plans; typically acts as Measure 1.)

Description of revenue element	Product Identifier	Notes
Appliances	Product Node Level 5 PI01200000	Excludes Tenovis profit centers: 20001496, 20001497, 20001498, 20001499, 20001500, 20001501, 20001502, 20001503, 20001504, 20001505, 20001506, 20001507, 20001508
Applications	Product Node Level 5 PI01300000	Excludes Tenovis profit centers: 20001509, 20001510, 20001511, 20001512, 20001513
Converged Systems Division	Product Node Level 5 PI08000000	
Sls Opns Mktg Other	Product Node Level 5 PI01A00000	Excludes Tenovis profit centers: 20001514, 20001515, 20001516, 20001526, 20001527, 20001528, 20001529, 20001530, 20001531, 20001532, 20001533, 20001534, 20001535, 20001536, 20001537, 20001538, 20001539, 20001540, 20001541, 20001542, 20001543, 20001544, 20001517, 20001518, 20001519, 20001520, 20001521

SMBS Product Revenue

(Used in SMBS compensation plans; typically acts as Measure 1.)

Element Description	Product Identifier	Notes
Total recognized revenue for all SMBS Products	PI08250000	
	PI08200000	

Revenue Measurement Inclusion/Exclusion Rules

The following table illustrates how revenues will be included and excluded from the total set of results available to be credited and retire quota for each major Sales Team organization.

Exclusion Description	Exclusion applied to:	Sales Group Receiving Credit	Notes
Strategic Accounts	• **GSCM** Associates assigned to territories • **SMBS** Associates assigned to territories	• Associates assigned to Strategic Accounts	• **These exclusions apply to U.S.-based Sales associates ONLY.** • ALL location revenues are excluded using Hierarchy Node Level 1 IDs • Exclusions will apply against both direct and indirect revenues. • Some exclusions vary by plan. Review your condition sheet and/or contact your local Sales Operations Manager to determine if you will receive credit for Strategic, Regionally and/or Locally Named Accounts.
Regionally and Locally Named Accounts	• **GSCM** Associates assigned to territories • **SMBS** Associates assigned to territories	• Associates assigned to Regionally and Locally Named Accounts	

Revision History

Description of Change	Author	Version	Date
Initial start-up document	TMB	v.1	10/01/04
Added 33% Discount Factor to all Services definitions/components	SNP	v.2	01/07/05
Added Extreme Networks value for direct and indirect sales	SNP	v.2	01/07/05
Added Refurbished Equipment value	SNP	v.2	01/07/05
Added Profit Centers under Managed Services in ATS & Net New Services measures	SNP	v.2	01/07/05
Added note under Carrier Services contract value; no discount factor effective 1/1/05	SNP	v.2	01/07/05
Added note under Net New Incremental Contract Value for all Maintenance; tracked manually for International	SNP	v.2	01/07/05
Added note on Revenue Measurement Inclusion/Exclusion Rules table re: credit variations by plan	SNP	v.2	01/07/05
Updated Avaya Total Solution Measure as follows: updated ECG Product def's w/ "level 5" pc node desc; added IPOffice Profit Ctrs 20001469 & 20001481; eliminated Product IDs PI0311 & PI0340 under Management Services and added note "excluding Tenovis PC's" in the Services Contract Value section; replaced Network Consulting/PSO with CSI, added PSO Only, updated PC descriptions under Per Occurrence Maintenance and added note "excluding Tenovis PC" in the One-Time Billed Service Charges section	SNP	v.3	08/01/05
Updated Net New Incremental Services Contract Value as follows: eliminated Product IDs PI0311 & PI0340 under Management Services; added note "excluding Tenovis PC's	SNP	v.3	08/01/05
Updated Services Annuity Revenue as follows: eliminated Outsourcing Product ID PI0340; eliminated MVV Product ID PI01417500; added note "excluding Tenovis & Expanets PC's"; added PC Nodes PI03410000, PI03420000, PI03430000, PI03440000 for Custom Managed Svcs, Remote Ntwk Operations, Hosted Solutions & Spectel (respectively); added Bus Comm Consulting PC 20001457	SNP	v.3	08/01/05
Updated ECG Product/Applicatoin Revenue as follows: updated ECG Product def's w/ "level 5" pc node desc; added note "excluding Tenovis PC's";	SNP	v.3	08/01/05

EXHIBIT 6

AVAYA

FY05 Global Sales Compensation Plan Design

Effective: October 1, 2004

IP Telephony | Contact Centers | Unified Communication | Services

AVAYA

Today's Agenda

- Plan Overview
- Performance Measurement
- Payout Curves
- Payout Calculation
- Additional Information
- Q&A

AVAYA

The FY05 Sales Compensation Plan

- Represents Avaya's Commitment to a Pay-For-Performance Culture
- Rewards Extraordinary Revenue Growth and Positions Overachievement Earnings at Top Competitive Levels
- Raises Minimum Performance Expectations
- Supports a Ramped Year-to-Date Earnings Model
- Reflects the Complete Avaya Solutions Portfolio Consistent with an Integrated Sales Force Model

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Key Elements of the ’05 Sales Plan

- **Familiar Plan Structure**: Quota-Based Plans
- **Unified Performance Measure**: Single Total New Revenue Performance Measure for most sales roles
- **Enhanced Services Sales Crediting**: Credit for contracts sold *without* equipment and incremental new value of renewals and recasts
- **Stable Crediting**: Product at Rev Rec, One-Time Services at Completion, Multi-Year Contracts at Contract Commitment
- **New Attainment Calculation:** YTD Calculation focuses on immediacy and consistency
- **New Payout Mechanics**:
  - Establishes minimum performance thresholds by job category
  - Lower payout for performance below 100%
  - Accelerators increased by 50% over last year (Pays 3X >100%)

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Total New Revenue Measure

Basic Revenue Measurement: A Single Total New Revenue Measure that combines all Products and Services. The Total New Revenue Measure is the sum of Product and Services sub-goals.

Basic Measure:

$$\frac{\text{Total New Revenue Credit}}{\text{Total New Revenue Quota}}$$

Breakdown of Quota Retirement (Credit)

- + ECG Product Revenue
- + One-Time Billed Services (e.g., Implementation)
- + Services Contracts (at .33 Value)
  - + POS, New, Renewals, Recasts
  - + Maintenance contracts sold with and without equipment
  - + Managed Services
  - + Carrier Services Minimum Contract Value
- + IP Office (Direct only, US Named and Strategic)
- ? Services Contract Cancellations (at .33 Value)

Notes:

- Excludes Services Auto-Renewals.
- Product and One-Time Services credit at Revenue Attainment.
- Multi-Year Services Contracts credit at Committed Contract Value.
- Indirect credit factors set by segment/region (see comp portal).

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Performance Measures by Plan

	Basic Compensation Plans (Not all plans illustrated, may vary by region)						
	SAM/First-Line Manager (SAO/ Region)	Named Account Manager (SAO, Region)	Territory Account Manager (Region)	Channel Account Manager (Region)	Product Specialist (SAO, Region)	Sales Engineer (SAO, Region)	New Business Developer (SAO, Region)
Measure 1:	▪ 100% Total New Revenue	▪ 100% Total New Revenue	▪ 100% Total New Revenue	▪ 80% Total New Revenue	▪ 100% Product Revenue	▪ 100% Total New Revenue	▪ 50% Total New Revenue
Measure 2:				▪ 20% MBO			▪ 50% MBO

- See full plan documents for performance measure detail by plan

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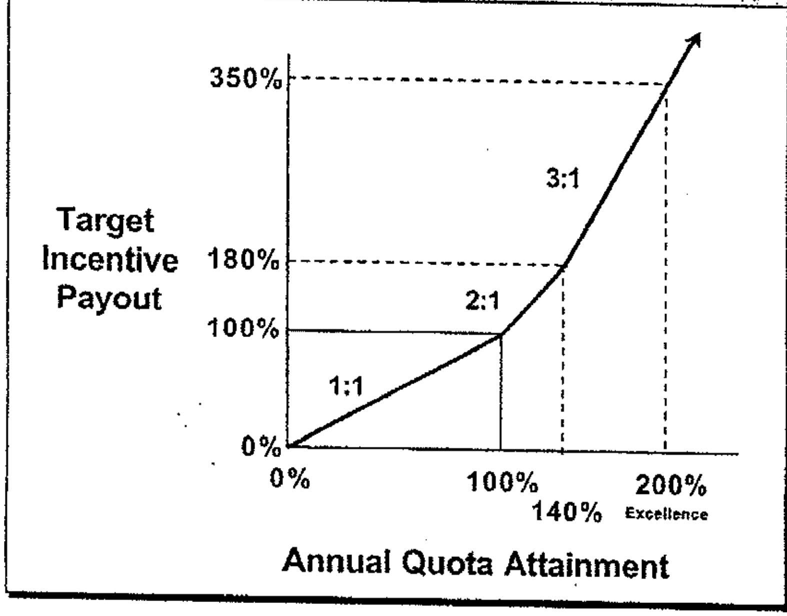
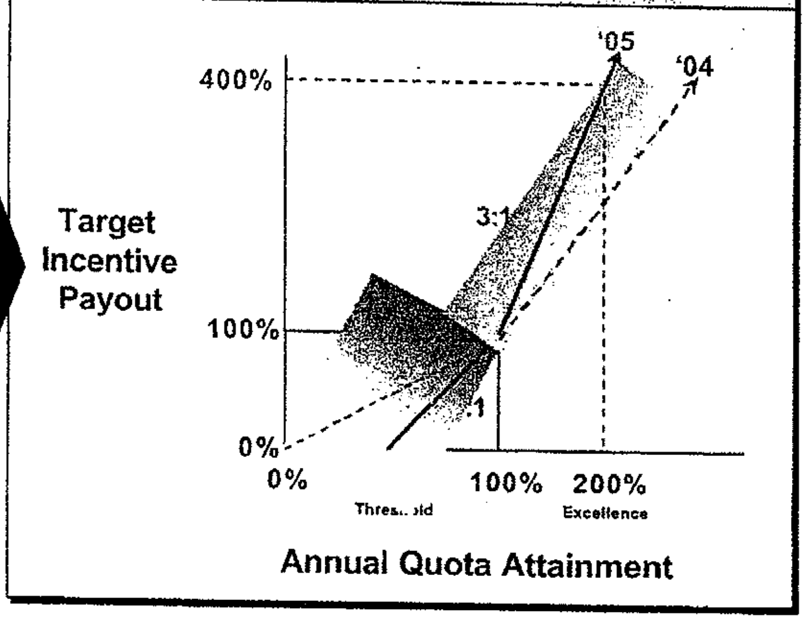
'04-05 Annual Payout Curve Comparison

- **Threshold of Minimum Performance** – Lower payout for performers below 100% performance
  - Thresholds based on job category: 50% for Individual Contributors, 65% for Managerial Roles, and 70% for Support Roles
- **Increased Accelerators** – 50% higher accelerator (3X) payout for all roles above 100% performance

FY04 Individual Contributor Payout Curve



FY05 Individual Contributor Payout Curve



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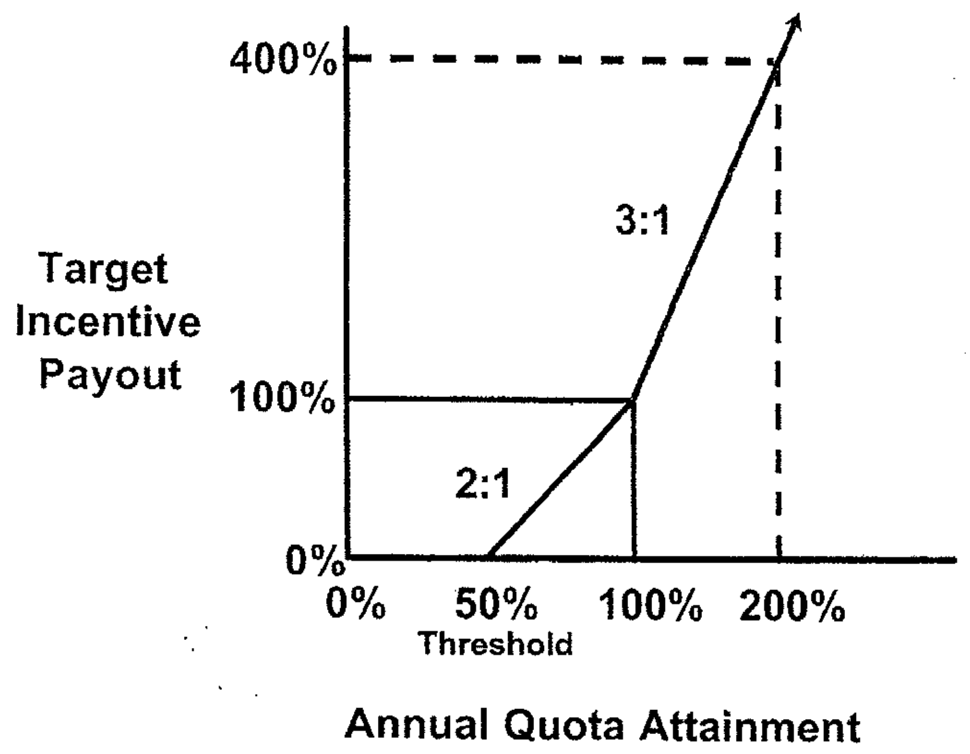
FY05 Revenue Curve – Individual Contributors

(Named CE, Territory CE, Alliance Manager, SAM -Non-Managerial, CAM, NBD, Telesales, Global Solutions Manager)

FY05 Individual Contributor Payout Curve



Annual Earnings Table

Annual Performance	% of Target Incentive Earned	Payout Rate (% of TI per point of Attainment)
150%	250%	3.00%
145%	235%	3.00%
140%	220%	3.00%
135%	205%	3.00%
130%	190%	3.00%
125%	175%	3.00%
120%	160%	3.00%
115%	145%	3.00%
110%	130%	3.00%
105%	115%	3.00%
100%	100%	2.00%
95%	90%	2.00%
90%	80%	2.00%
85%	70%	2.00%
80%	60%	2.00%
75%	50%	2.00%
70%	40%	2.00%
65%	30%	2.00%
60%	20%	2.00%
55%	10%	2.00%
50%	0%	2.00%

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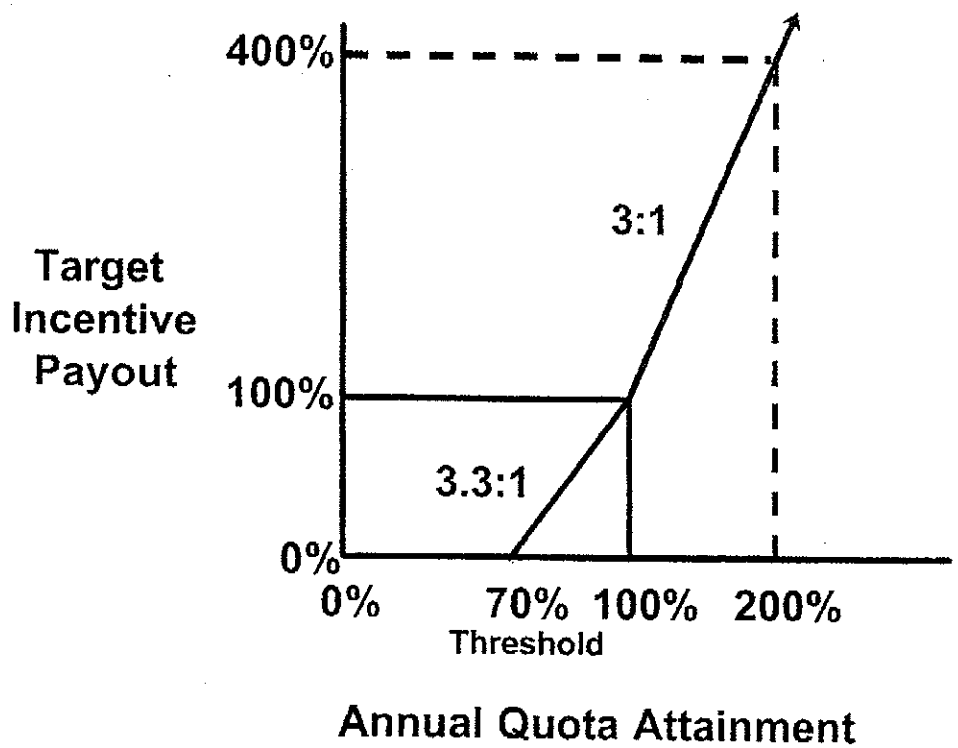
FY05 Revenue Curve – Support Roles

(Sales Engineers, Specialists (Product, Services), DAM, RON CE)

FY05 Sales Support Payout Curve



Annual Earnings Table

Annual Performance	% of Target Incentive Earned	Payout Rate (% of TI per point of Attainment)
150%	250%	3.00%
145%	235%	3.00%
140%	220%	3.00%
135%	205%	3.00%
130%	190%	3.00%
125%	175%	3.00%
120%	160%	3.00%
115%	145%	3.00%
110%	130%	3.00%
105%	115%	3.00%
100%	100%	3.33%
95%	83%	3.33%
90%	67%	3.33%
85%	50%	3.33%
80%	33%	3.33%
75%	17%	3.33%
70%	0%	3.33%

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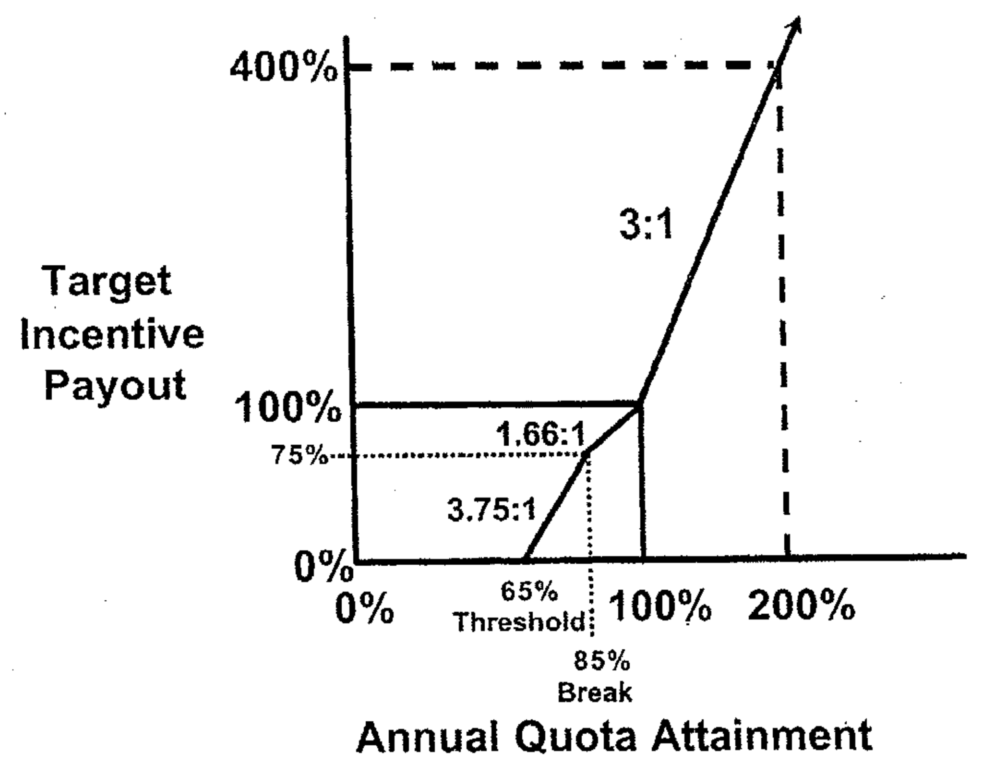
FY05 Revenue Curve – Sales Managers

(All Second and First-Line Managers: Field, Channel, SE, Specialist, and Telesales)

FY05 Sales Manager Payout Curve



Annual Earnings Table

Annual Performance	% of Target Incentive Earned	Payout Rate (% of TI per point of Attainment)
150%	250%	3.00%
145%	235%	3.00%
140%	220%	3.00%
135%	205%	3.00%
130%	190%	3.00%
125%	175%	3.00%
120%	160%	3.00%
115%	145%	3.00%
110%	130%	3.00%
105%	115%	3.00%
100%	100%	1.66%
95%	92%	1.66%
90%	83%	1.66%
85%	75%	3.75%
80%	56%	3.75%
75%	38%	3.75%
70%	19%	3.75%
65%	0%	3.75%

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Year-to-Date Payout Calculation

Formulas	**Calculation Example** Illustrative Client Executive: Annual Quota $5,000,000, Target Incentive = $50,000
1) Calculate YTD Quota Performance **YTD Quota Performance =** (Cumulative YTD Achievement / Cumulative YTD Quota)	(Cumulative YTD Achievement = $2,500,000) / (Cumulative YTD Quota thru 6 months = $2,500,000) = **100% YTD Quota Performance**
2) Calculate YTD Earned **YTD Earned =** (YTD Quota Performance * Payout Factor * Cumulative YTD Target Incentive)	(YTD Quota Performance = 100%) * (Payout Factor = 2X *50 Points) * (Cumulative YTD Target Incentive = $25,000) = **$25,000 Cumulative YTD Earned**
3) Calculate Monthly Payout **Monthly Payout** = (YTD Earned - Previous Payments)	(YTD Earned = $25,000) – (Previous Payments = ex. $20,000) = **$5,000 Monthly Payout**

<u>**Payout Rules:**</u>

- Accelerators do not retroactively apply to prior performance range (i.e., 3X accelerator applies above 100%, not below).
- YTD Payout is <u>capped</u> at 125% of YTD TI until reaching 100% of annual quota. Full 3X accelerators are released after reaching 100% of annual quota.

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Year-to-Date Payout Example

Example: Low early year sales, finish the year above 100%.

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
YTD TI	$10	$20	$30	$40	$50	$60	$70	$80	$90	$100	$110	$120
YTD Quota	$100	$200	$300	$400	$500	$600	$700	$800	$900	$1,000	$1,100	$1,200
YTD Sales	$100	$100	$250	$300	$450	$550	$725	$800	$875	$1,200	$1,300	$1,500
YTD Attainment	100%	50%	83%	75%	90%	92%	104%	100%	97%	120%	118%	125%
Annual Attainment	8%	8%	21%	25%	38%	46%	60%	67%	73%	100%	108%	125%
FY05 YTD Earned	$10	$0	$20	$20	$40	$50	$73	$80	$85	$120	$170	$210
FY05 YTD Paid	**$10**	**-$10**	**$10**	**$0**	**$20**	**$10**	**$23**	**$8**	**$5**	**$35**	**$50**	**$40**

A B C D

KEY POINTS:

A Associate Deficit – YTD earned is less than YTD paid. Deficit nets against next period earnings.

B YTD Performance >100% YTD pays 1:1 up to 125% of YTD attainment (unti! 100% of Annual).

C Earnings at 100% of Annual pay 100% of Annual Target Incentive.

D Earnings greater than 100% of Annual pay Accelerators of 3:1.

Assumptions:
Individual Contributor Compensation Plan, 50% Threshold
Annual Target Incentive: $120
Annual Quota: $1,200

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How to Maximize Earnings in FY05

1. Take Advantage of the Plan
   - Drive sales early in the year!
   - Reach 3X escalators!
   - Solution sell Avaya's complete portfolio including robust Products, Applications, & Emerging Services
2. Expand Services Opportunities
   - Sell a Maintenance Contract with every equipment sale
   - Renew every Services Contract for longer term with additional options
3. Leverage Business Partners
   - Ensure every lead mapped to a Business Partner is sold with Avaya Services
   - Assist Business Partners in procuring OEM products through their Distributor

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Additional Information

- The Sales Compensation Portal will have the latest information on FY05 compensation plans and policies (Available October 11th).
  - Please bookmark: http://associate2.avaya.com/sales_market/compensation/
- Below is an example earnings estimator that you can download and use to model individual earnings scenarios.

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Please select the payout curve:

Field Sales

		Pay Mix
Base Salary	50,000	50%
Target Incentive	50,000	50%
Total Target Compensation	100,000	

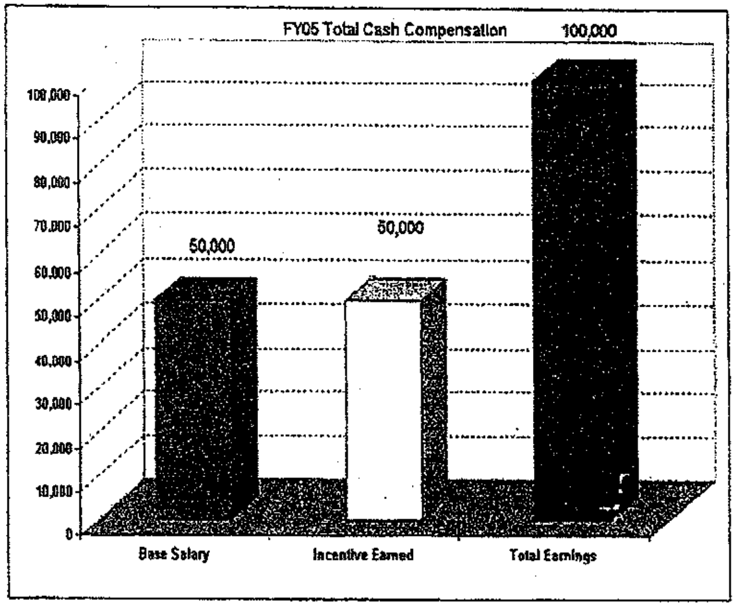
PERFORMANCE MEASURE:

1. Total New Revenue Measure	100%
Target Incentive	50,000
Maximum Incentive Payout	*Unlimited*
Enter Annual Performance	100%
Incentive Earned	50,000

Total Actual Incentive Earned:	50,000
Total Earnings (Base +Incentive):	100,000

Total New Revenue Payout Factors:

Performance	Factor
0% - <=50%	0
50%-<=100%	2
>100%	3



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Sales Compensation FAQ's

1. **Are there any links in this plan?**
   - No. There are no links between quotas or sub-quotas in this plan.
2. **Do I have to wait until the end of the year to get my accelerators?**
   - No. YTD overachievement is paid at 1:1 up to 125% until you surpass 100% of your annual goal. After crossing 100% of the annual goal, full YTD accelerators are released.
3. **What is an example of Net-New Services credit?**
   - Example: You sell a new $100,000 maintenance contract, but overwrite $25,000 of an existing (therefore canceled) contract. The Net-New TCV credit is $75,000 ($100K-$25K).
4. **Can I fall into a deficit?**
   - Yes. If current period earnings are less than the sum of prior incentive payments, you will be in negative earnings.
5. **Are Quotas Seasonalized?**
   - Seasonality only exists for US FED and SLE. All other quotas are linear (equally distributed among measurement periods).

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Live Q&A

If you have a question – ask!

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK CHURCH,)

Plaintiff,

v.

AVAYA CORPORATION,

Defendants.)
)

08CV47
JUDGE KENDALL
MAG. JUDGE COX

NOTICE OF FILING NOTICE OF REMOVAL OF CAUSE

FILED
JAN - 3 2008
Jan 3, 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

TO: ***Attorney for Plaintiff***:
Kenneth J. Merlino
Merlino Law Offices, P.C.
1275 Rosedale
Hoffman Estates, IL 60169

You are hereby notified that Defendant Avaya Corporation, in the above-entitled cause, filed its notice of removal of the case of ***Mark Church v. Avaya Corporation***, which was recently pending in the Circuit Court of Cook County, Illinois under Case No. 07 L 13053, a true and correct copy of which notice of removal of cause is served upon you and that said notice of removal of cause was filed on January 3, 2008.

AVAYA CORPORATION

By: ______________________
One of Its Attorneys

David M. Holmes
Bryan J. Johnson
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
120 North LaSalle Street, Suite 2600
Chicago, IL 60602
(312) 704-0550

456134.1

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the above and foregoing pleading was deposited in the U.S. Mail, enclosed in an envelope properly addressed to:

***Attorney for Plaintiff*:**

Kenneth J. Merlino
Merlino Law Offices, P.C.
1275 Rosedale
Hoffman Estates, IL 60169
(847) 567-5796

Before the hour of 5:00 p.m. this 3rd day of January, 2008.

Bryan J. Johnson

456134.1